United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 76-4104

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

MONROE TUBE COMPANY, INC.,

Respondent.

On Application for Enforcement of an Order
of the National Labor Relations Board

APPENDIX

ELLIOTT MOORE
Deputy Associate General Counsel,
National Labor Relations Board,
Washington, D.C. 20570

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

MONROE TUBE COMPANY, INC. and LOCAL 445, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA	Case Nos. 2-CA-13, 128 and 2-RC-16, 262

CHRONOLOCICAL LIST OF
RELEVANT DOCKET ENTRIES

In the Matter of: Monroe Tube Company, Inc.
Board Case Nos. 2-CA-13128, RC-16262

1973	
October 23	Charge filed
December 19	Complaint and Notice of Hearing dated
December 19	Report on objections and Recommendation dated
December 27	Answer to Complaint dated
1974	
January 21	Hearing opened
January 24	Hearing closed
February 2	Motion for Relocation of Hearing sited dated
February 3	Motion for Bill of Particulars dated
February 7	Bill of Particulars in part and Opposition to Motion for Bill of particulars in part dated
February 7	Order Rescheduling Hearing dated

February 9	Order Directing Hearing dated
February 14	Order on Respondent Motion for Bill of particulars dated
February 15	Order Consolidating Cases dated
May 16	Administrative Law Judge's Decision issued
June 4	Respondent's Telegram Requesting for extention of time to file Exceptions dated
June 6	Board's Telegram granting extention of time
June 7	Union's Telegram objecting to Extention of time to file exceptions
July 9	Respondent's Exceptions to Decision and Recommended Order of the Administrative Law Judge and Argument in Support of Exceptions dated
December 10	Board's Order Ordering that hearing be held before a different Administrative Law Judge dated
December 17	Respondent's Motion to Quash Complaint dated
December 17	Respondent's Motion to Stay dated
December 24	Respondent's Motion to General Counsel to withdraw Complaint dated
1975	
January 10	Opposition to Respondent's Motion to Quash Complaint and Motion for Reconsideration dated
January 21	Opposition to General Counsel's Motion for Reconsideration dated
September 15	Proposed Decision, Order, and Direction of Second Election dated
October 3	Respondent's Exceptions to Proposed Decision, Order, and Direction of Second Election of the National Labor Relations Board dated
December 1	Decision and Order, and Direction of Second Election dated
December 10	Motion for Reconsideration by the Full Board and Motion for Clarification and Specification dated
1976	
January 2	Order Denying Motions dated

DECISION

I. Findings of Fact

WALTER H. MALONEY, JR. Administrative Law Judge: These cases came on for trial before the undersigned on various dates in January, 1974, in Goshen, New York. The hearing was held upon a complaint, issued by the Acting Director of the Board's Second Region, alleging that Respondent Monroe Tube Company, Inc., violated Section 8(a) (1) of the Act. The hearing was also held upon the Union's objection to an election conducted by the Board on October 12, 1973. 1/ The Complaint, as amended, alleges that the Respondent 2/ violated Section 8(a) (1) of the Act by directing employees to withdraw Union authorization cards; by warning and directing employees to refrain from becoming members of the Union or voting for the Union at the representation election of October 12; by threatening to close the plant if the Union won the election; and by interrogating employees as to whether they had signed Union cards. The Objection to the Election referred to hearing alleges that, on October 10 and 11, the Respondent's President, Harold P. Grout, made pre-election speeches to employees in which he threatened to close the plant if the Union were victorious. Of critical significance in this case is the General Counsel's contention that, on August 15, 1973, the Union had been validly designated by means of authorization cards as the collective-bargaining representative of the Respondent's employees, and that the unfair labor practices committed by the Respondent herein have been so pervasive that they prevent the holding of a fair and free election. Accordingly, he requests a so-called Gissel 3/ remedy, requiring that the Respondent recognize and bargain collectively with the Union on the basis of pre-election designation cards. The Respondent denies the commission of any unfair labor practices and denies having engaged in any conduct which would warrant the Board in setting aside the results of the election

1/ The principal formal papers docketed in the complaint case (2-CA-13, 128) are as follows: Charge filed by Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Union) on October 23, 1973; Complaint issued on December 19, 1973; Answer filed December 28, 1973; Order consolidating complaint case with Case No. 2-RC-16, 262), issued January 15, 1974. Principal formal papers in the representation case (2-RC-16, 262) are as follows: Petition for

October 12, 1973. Respondent further asserts that, if any illegal conduct on its part is established, such conduct would not affect the holding of a fair and free election, so that, if the October 12 election is set aside, the Board should apply its "traditional" remedy of a re-run election rather than issuing a bargaining order. Upon these various contentions, the issues herein were joined.

1/ (Continued) an election in a unit of Respondent's production and maintenance employees (with the usual exceptions) filed by the Union on September 6, 1973; "Stip" election agreement approved by Director Second Region, on September 17, 1973; Tally of Ballots in Election held on October 12, 1973, in which 15 votes were cast for the Union and 22 were cast against the Union; Objections to the Election filed by the Union on October 15, 1973; Respondent's reply to Objections filed on October 22, 1973; Report on Objections, overruling Objection 1 and recommending a hearing to be held on Objection 2 issued December 19, 1973; Order of the Board, issued January 9, 1974, directing a hearing before an administrative law judge on Objection 2 in conjunction with the hearing on the outstanding complaint; Hearing held in Goshen, New York, on January 21-24; Briefs filed herein on March 20, 1974, by the General Counsel and the Respondent.

2/ Respondent admits, and I find, that it is a New York corporation which operates a plant at Monroe, New York, where it is engaged in the manufacture, sale, and distribution of tubing and related products. During the past year, a representative period, it purchased from points and places outside the State of New York goods and materials valued in excess of $50,000. It is an employer within the meaning of Section 2(2), 2(6) and 2(7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3/ N. L. R. B. v. Gissel Packing Company, 395 U.S. 575 (1969).

A. The Unfair Labor Practices Alleged

Respondent operates a small family-owned factory at Monroe, New York, where it manufactures metal tubing of various sizes and descriptions. In this operation it employs about fifty individuals. As hereinafter discussed, at the critical time here in issue, it employed some forty-seven production and maintenance employees. Early in August of 1973, Teamsters Local 445 which maintains its headquarters in Yonkers, New York, began an organizing campaign among the Respondent's employees. The drive was under the general supervision of Business Agent Raymond F. Ebert. Cards were solicited exclusively by in-house organizers led by employees Thomas Cochran and Jose Cordero. The bulk of these designations cards were obtained during the week of August 6 through August 10, although some were obtained thereafter.

On Friday afternoon, August 10, Respondent's President, Harold P. Grout, briefly addressed the employees concerning the organizing drive in a short speech delivered at the conclusion of the day shift. This speech was also attended by the eight or ten night shift employees who were just arriving. Day-shift employees were detained by the simple strategem of delaying the distribution of their paychecks until Grout concluded his remarks. Grout was angry when he spoke. He read from the following text, prefacing his prepared remarks with the statement that three lawyers had advised him not to address his employees in this manner but that he was going to do so anyhow:

> "Information has come to my attention that cards have been and are being circulated indicating union interest. These signature cards could have very important and serious legal consequences for you, your families and the Company. You may have heard one rather exaggerated side of the story, but you have not heard the Compan y's views concerning Union representation of our employees. I strongly urge you not to sign any of these cards until another meeting or communication can be arranged within the next few days, at which

4/ In its brief, Respondent moved the undersigned to strike from the record all evidence relating to Grout's speech of August 10 and his speech of August 15. Respondent contends that these speeches antedated the filing of the representation petition on September 6 and are thereby waived by the Union as the basis

time we will make our views known to you--and we will be prepared to discuss this matter with you in further detail."

Grout told employees that, if they wanted a copy of this speech, they could come to the office and obtain one. Cordero asked Grout before he left the room whether he was saying that it was against the law to join a union. Grout refused to answer the question and departed. Cordero then spoke to the employees who remained, stating briefly that Grout was wrong, that it was not illegal to join a union, and that employees could join a union. He then asked a supervisor, Frank Malek, for a copy of Grout's speech, but he never received one.

Grout again addressed assembled groups of employees on the following Wednesday, August 15. On this occasion, he spoke to the day shift and night shift separately. The prepared text of the second speech, read at both meetings by Grout, was considerably longer than the first speech and was crouched in language evidencing strong hostility to the organizing drive. Grout began by telling employees that the drive was costing the Company a considerable amount of time and money which could be better spent in earning additional profits. However, the Company was going to spend the time and money to make sure that employees had all the facts because having a union in the plant was a very serious consideration. The purpose of the August 15 speech was to provide employees with information "about these union cards and the way these cards could give the Teamsters control over you and your job." Grout asserted that a person who asked an employee to sign a Teamster card would tell him anything to get him to sign but that a solicitor could not guarantee any of his promises. He stated that signing a card is not the equivalent of signing for higher wages or better working conditions but rather would bind the employees to the control of

4/ (Continued) for any finding of objectionable conduct relating to the election, under the Board's rule in Goodyear Tire and Rubber Company, 138 NLRB 453. Respondent also contends that the matters were not alleged specifically as unfair labor practices in the complaint and thus may not be the subject of any finding of a violation of Section 8(a) of the Act. As the speeches in question were delivered within the period of limitations set forth in Section 10 (b), and are relevant and material in evaluating specified unfair labor practices, Respondent's motion to strike is denied.

the Union's constitution. While noting that to sign or not to sign was the employee's business, Grout said he wanted to provide employees with facts to see that employees were not being fooled. He scored what he believed to be several tactics aimed at getting card signers to sign, but urged employees to think long and hard if asked to sign and to read the small print. He said that the effect of signing a card was to authorize a union to be a bargaining agent, possibly without an election. He claimed that unions do not always believe in the right of secret ballot election but try to use cards as a substitute for an election. He warned of the possibility of a strike for recognition, or in lieu thereof and that a card count might be used as a basis for recognition. In the event that the Union called employees out on strike, an employee could lose his job. In the latter instance, Grout warned that cards signed by employees would be supplied to the company, that employees who signed them might be subpoenaed to testify at a hearing, where they would be subjected to cross examination by company attorneys. "As you can see," he stated, "signing the card is a very serious matter and has many legal implications."

Grout went on to say that any employee has the right to refuse to sign a card, that employees have the right to refuse to talk to union agents, and that they did not need to talk with another employee who might be bothering them about the union. "No one can force you to sign a union card and if anyone does, let me know and I will see that it stops, fast!" He stated that he always felt that anyone is entitled to a mistake, and suggested that, if any employee had been refused the return of a signed card, the employee could write to Teamster Local 445 in Yonkers and ask for the card back. He suggested: "Keep a copy of your letter and if you need the use of copying equipment I will see that you get it." He also stated that the Company would supply employees with stationery and the address to which to write for the return of the card.

Grout told employees on August 15 that the Company is not interested in having a union in the plant, that it operated successfully for thirty years without a union, and that it provided employees with a number of fringe benefits, which he enumerated, without the necessity of a union contract. He then stated: "It is my strong belief that it is not in your interest or in the interest of the

Company to have the Teamsters here in our plant. There are many reasons why I do not believe it is in your best interest to get involved with this union or to sign any of their cards," characterizing a Teamster authorization card as a blank check which meant giving rights away to a union that had no interest in employees except to receive dues. He asked, "Why not speak for yourselves, as you have always done?' Grout went on to enumerate what he felt were the disadvantages of union representation, including the payment of union dues and assessments, the possibility of strikes, the requirement of obedience to union constitution and by-laws, union fines, the fact that promises are not the equivalent of guarantees, and a disparagement of persons involved in the union movement. Grout concluded his hard-sell speech with the statement:

> "I am not trying to sell you on anything against your wishes; the decision is your business. If you have any questions, I will be around the plant, and I will be happy to answer them for you on an individual basis. Please feel free to ask them of me or to bring your questions to your foreman. I think we have a good, solid, well-established, respected Company here--let's keep it that way!"

During the same week, James Verbert, the night foreman, approached employee Terry Nowak for the purpose of requesting Nowak to request the return of his authorization card. Verbert presented Nowak with a written form requesting the return of the card and asked Nowak to sign the form. Nowak signed it, but asked Verbert not to turn it in to the office because he wanted to compose his own letter of withdrawal. Verbert disregarded Nowak's instruction and turned in the signed form. Two days later, the Plant Manager John Romer approached Nowak with the form and told him that, in its present state, the form was useless because Nowak had omitted filling the Company name. He asked Nowak to fill in the Company name on the form. Nowak refused, stating that he wished to draft his own withdrawal letter. Romer became flustered and repeated his request, but when Nowak persisted in refusing, Romer left. 5 /

5/ Neither Romer nor Verbert testified at the hearing. Based upon well-settled evidentiary principles, the failure of the Respondent to summon two

Nowak did not in fact forward any letter to the Union seeking the withdrawal of his card.

Verbert asked employees Charles Rosenstock if he had signed a card and also asked him if he was serious when he did so. Verbert also asked Rosenstock to withdraw his card. At Verbert's request, Rosenstock wrote a letter to the Union requesting withdrawal and gave the letter to Verbert to be mailed. Verbert may well have talked to night-shift employee David Hicks for the same purpose, but Hicks' memory was hazy as to particulars on this point. Hicks did write a letter seeking the return of his card and gave the letter to Verbert to turn it. Thereafter he received from Romer a photostatic copy of his letter. Verbert also asked employee Edward Willard if he had signed a union card and asked him if other employees had signed cards. Verbert asked Edwards on several occasions to write a letter withdrawing his union card. Verbert prepared a letter for Willard to sign. At the Company picnic on August 18, after Willard and others had been drinking, Verbert presented the prepared letter to Edwards and Edwards signed it. Later, Verbert turned the letter into the Company office to be mailed.

At or about this same period of time, employee Norman A. Sensabaugh came to the Company office and asked Plant Manager Romer for the address to which to write to obtain the withdrawal of his union card. Romer did not give him the address at this time, but came into the production area shortly thereafter with the address written on several sheets of paper. He gave one to Sensabaugh and asked Sensabaugh to distribute the other slips of paper to other employees. Sensabaugh gave one slip to employee Henry Plainman.

The Union received letters from four employees requesting the return of other cards. Grout admitted in his testimony seeing copies of the letters of withdrawal.

5/ (Continued) of its management employees to testify gives rise to the presumption that, if summoned, their testimony would be unfavorable to the Respondent's case. Wigmore, Evidence, Third Edition, Secs. 285 et seq.

The Respondent conducted an intensive antiunion campaign throughout the period preceding the October 12 election. In addition to a large amount of literature which was handed out or mailed to employees warning them of the pitfalls of collective bargaining and union representation, the Respondent conducted a contest aimed at driving home some of its points. In a written handout disseminated to the entire bargaining unit shortly before the election, employees were asked to guess the length of the longest Teamster strike in history. A $50 and a $25 U.S. Savings bonds were advertised as the first and second prizes. Employees could enter the contest by placing their answers on slips of paper and dropping them in the Company suggestion box. Shortly after announcing the contest relative to guessing the longest Teamsters strike, Respondent announced a second and similar contest, with additional prizes, for the employees who guessed the amount of the highest Teamster fine levied against a union member. The handout which announced the second contest stated:

> "This contest should be easier than guessing the longest Teamster strike; don't worry about some people getting 'inside information' from the union on this one either. Just pick a nice <u>big</u> number--you might win."

In the course of a final pre-election speech to the members of the bargaining unit, which took place on the day before the election, Grout announced the names of the winning employees. A total of $200 in savings bonds were awarded to a total of six employees, duplicate prizes being awarded in some instances because the figures in some answers were reportedly very close to each other. 6/

Shortly before the October election, Chief Engineer Frank Hegedus

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6/ According to the information which was imparted by the Respondent on this occasion to its employees, the longest Teamster strike occurred in Philadelphia and lasted 614 days. Respondent also informed its employees that there were 60 men working on the first day of the strike, but only 18 when the strike ended. Respondent announced that the largest Teamster fine occurred in Kansas City and amounted to $1,500.

was engaged in a conversation with night shift employees James Mendoza and Dennis Vittum. The conversation began with Mendoza kidding Hegedus to the effect that the Union was going to win the forthcoming election. Hegedus' reply was that the employees were wrong in wanting a union because the Compan y could not afford to give any raises, and that if the union won, the doors of the plant would be closed the next day so employees would win what amounted to Pyrrhic victory. 7/ Mendoza told Hegedus he thought Grout was bluffing.

Hegedus admitted a conversation with Mendoza and Vittum, and admitted stating that the Union figures on wage rates he had heard were way out of line and far beyond what the Company could afford to pay. He denied stating that if the Union came in, the plant doors would close. I credit the corroborated version of this conversation related by Mendoza.

On the two days immediately preceding the October 12 election, Grout spoke to employees at length in massed assemblies. He spoke to night-shift employees on Wednesday evening, October 10, and to day-shift employees on the following afternoon. Unlike his other two speeches, Grout did not use a fully prepared text but referred in the course of his talks to notes written on a yellow legal-size pad. The document presented by the Respondent as being Grout's speech of October 10-11 is actually Grout's recollection of his remarks, personally typed by Grout several weeks later and at a time when charges and objections to the election were pending. As a document prepared for use in possible litigation, it is necessarily suspect.

Both at the evening and afternoon speeches, Plant Superintendent Monks gave a straight forward informational talk on the mechanics of how the election would be conducted. At the October 11 afternoon session, the winners of the contests were also announced by Grout. Grout began each speech by

7/ Hegedus did not employ this exact phrase.

apologizing for the sound of his voice, stating that he was suffering from laryngitis. His message began with a plea that everyone vote, and that everyone vote "No." He pointed out that a majority of those voting would decide the question for the entire bargaining unit, and that a margin of a few votes could decide the question for some 40-odd voters.

He recounted the high cost of union membership, as discussed in previous letters which were mailed to employees, and estimated that an employee would pay $600 in dues over the course of a three-year contract. He pointed out that other companies, such as Eastern Alloys and one of the Respondent's own customers, J. L. Fabricating, had been nonunion, but a union had won an election in each plant and it had taken three years under a contract before employees could profit by their mistake and have the opportunity to vote the union out. He claimed that, without a union, there were no initiation fees, no dues, no assessments, no fines, and no strikes, and, hence no loss of wages and benefits. Grout noted that with a union there were no guarantees, including any guarantee that employees would have the Union medical program, since the cost of this program might be prohibitive. Grout also stated that a Union victory would not automatically mean the adoption of a Union pension plan. In this connection, he touted the Company's present profit-sharing plan. He stated there were no hard feelings on his part because of the union activity of any employee, and that the Company had never fired anyone without good and just cause. "Anyone can make a mistake; the important thing is that we learn from it." He pointed out that the election was secret and that no one would ever know how any employee voted, so that if an employee had promised another employee something just to get him off his back, this promise should not influence what an employee should do when he goes into the voting booth.

Grout pointed out that, if a union won, contract negotiations could drag on for a long while. He raised the spectre of frozen wages and benefits during the course of negotiations, as contrasted with the past practice of regular annual raises, without actually stating that such would occur. He asserted that he was in a better position than anyone else to determine what the Company could afford, and that it could not afford a union. It was a simple matter of

economics. He said that, because of the age of company equipment, Monroe Tube could not compete with other tube companies in other parts of the country which have more modern equipment. He noted that the competition was rough and that other tube companies were in the middle of the raw material source area, while Monroe Tube paid $1,000 in shipping charges to ship raw material from the midwest to the east, and then to ship finished products back to the midwest. Grout said it would be more desirable to be located in Western Pennsylvania, since that was where the center of the industry was located. He reiterated that Monroe Tube had costs which competitors did not have, but that it was certainly as efficient as certain unionized mills which have union job classifications. According to Cochran, whom I credit, Grout then paused in his delivery, laid his yellow pad down, and stated, "But I leave it to your imagination what would happen if the Union was voted in." Cordero, whom I credit, testified that Grout told employees that regardless of what happened, he could still sell the plant Monday morning. Carl Olin testified to the same effect. Several employees credibly testified that Grout spoke of an interest he held in another business which manufactured airplanes and that he would personally not be affected by a shutdown of the tubing company. 8/ He recounted that the Company was founded in Monroe, New York, by his father-in-law, that it was debe free, and that he wanted it to stay in Monroe. He also stated that, in previous years, he had received offers to sell the plant but had turned them down.

Grout went on to say that one reason he did not want to sell is that selling would terminate the incomes which Monroe Tube provided to sixty local families and which he hoped it would continue to provide. However, he again alluded to a matter of economics--that a pie could only be cut into so many pieces, and then there is nothing left. He said that he thought that an employee

8/ Respondent's witness Eddie Hotaling stated that he took certain of Grout's statements to mean that Grout would close the plant if the Union was voted in, so he asked Grout privately if this is what he meant. Grout said no.

would be risking a lot to vote for the Union. He quoted an unnamed employee as having told him that if the Company cannot afford a union, in the long run he may not have any job left. He reminded employees that, in the last analysis, the final decision on running the Company was his because he owned the Company and he knew what it could afford. He stated that no union could guarantee any employee his wages or his job, and that no union could force him to agree to paying anything that employees were not already receiving. He warned that, under collective bargaining, an employee could wind up with less than he has now. He concluded with plea for a "No" vote.

Mendoza testified credibly that, in delivering the speech to the night shift, Grout said that if the union came in, the Company would have to close its doors because the Company could not operate with a union. After the speech to the night shift, Mendoza engaged Grout in a conversation concerning the benefits of the Union's medical plan versus the Company plan. Mendoza ventured the opinion that he would be saving money under the Union's plan, even if he had to pay union dues in addition to his contribution for medical insurance. Grout's reply was that he did not have to accept the Union's plan. He also went on to tell Mendoza that the Company was operating on a tight margin; that if the Union came in, he did not see any way for the Company to stay open; and that he would have to close the doors. Grout also told night shift employees that the Union fomented strikes, that strikers lost all privileges, and that employees could be fired for crossing picket lines, could not draw unemployment, and under Union rules, could be prevented from working during a strike in another shop.

On the following day, the employees voted 22 to 15 to reject the Union. Shortly thereafter, charges and objections leading to the instant litigation were filed. On January 4, 1974, Grout dispatched a letter to employees in which he discussed the post-election procedures and the current status of the dispute. In the course of the letter, he stated:

> "Another item to be decided in this hearing is a claim that I threatened to close the plant if our employees selected a union. I NEVER SAID THAT! It is unfortunate however if some individuals may not have heard what I did say. So that there

will be no misunderstandings by any employee, let me categorically tell you right now that I will not close the plant because employees choose to be represented by a union"' (Emphasis his)

B. Analysis and Conclusions

1. Respondent's campaign to encourage the withdrawal of union cards

No sooner had the organizing drive begun than the Respondent, in early August, started its all-out effort to counter this effort by prompting the withdrawal of cards that had been signed. The General Counsel does not allege that Grout's speeches to employees, given on August 10 and 15, were per se violations of Section 8(a)(1) of the Act. While these remarks may not have been formally challenged by the Complaint herein, they left no lingering doubt in anyone's mind as to how the owner and highest-ranking official of the Company felt about the organizing drive. They also provided Grout's subalterns with their marching orders, which were carried out by means and methods which plainly and seriously violate the Act and which the Complaint specifically addresses. Grout admits that he actually suggested to all employees that they withdraw their cards and admits that he offered to assist them in doing so. Such conduct in and of itself is of very doubtful propriety. See N. L. R. B. v. Firedoor Corporation, 291 F. 2d 328 (C. A. 2, 1961); Edward Fields, Inc. v. N. L. R. B., 325 F. 2d 754 (C. A. 2, 1963). By offering the facilities of the Company to assist employees in making copies of their withdrawal letters, he was necessarily probing into their present union sentiments and their past union activities. Grout admits having received copies of some of the letters of withdrawal. His offer to provide employees with the Union's address necessarily prompted a disclosure of protected activity on the part of those employees who seek such inf ormation.

Following hard upon Grout's suggestion, his night foreman, Verbert, spoke to several employees about withdrawing their cards. In the course of one conversation, Verbert unlawfully interrogated employee Rosenstock as to

whether Rosenstock had signed a card and whether Rosenstock was serious when he did so. 9/ He asked several employees, including Rosenstock to write letters seeking the withdrawal of their union cards and offered Company assistance, as per Grout's public utterance, to facilitate the effort. Verbert

9/ The Board has long held that interrogation of employees by supervisors concerning their union activities in per se a violation of Section 8(a)(1) of the Act, except under very limited and privileged circumstances. Cf. Strucknes Construction Co., Inc., 148 NLRB 1368; Johnnies Poultry Co., 146 NLRB 770. This case arose within the geographical jurisdiction of the United States Court of Appeals for the Second Circuit, which eschews the Board's broad rule respecting interrogations of employees and has adopted its own rule. Bourne v. N. L. R. B., 332 F. 2d. 47 (1964). The Second Circuit has followed its own rule in such cases as N. L. R. B. v. Lorben Corporation, 345 F. 2d. 356 (1965), N. L. R. B. v. Rubin, 424 F. 2d. 748 (1970), N. L. R. B. v. Gladding Keystone Corporation, 435 F. 2d 129 (1970), and N. L. R. B. v. General Stencils, Inc., 438 F. 2d 896 (1971). According to the Bourne rule, five factors must be taken into consideration in evaluating the legality of an interrogation of employees by a supervisor. These factors include: (1) the background of the case, including whether there is a history of employer hostility and discrimination; (2) the nature of the information sought, e.g. whether the interrogator appears to be seeking information on which to base taking action against individual employees; (3) the identity of the questioner, i.e. how high he was in the company hierarchy; (4) where the interrogation took place, involving considerations of whether it took place in an atmosphere of unnatural formality; and (5) the truthfulness of the reply. In the instant case, the interrogation of Rosenstock by Verbert took place against a b ackground of intense antiunion hostility, as evidenced by Grout's speeches and various Company handouts. The information in question was not solicited out of idle curiosity on the part of the foreman but was part of a program of illegally causing the withdrawal of union cards. The nature of the question was probing. It was designed to, and did, elicit from the employee not only information as to whether he signed a card, but also whether he was serious about signing. It is clear from the context of this case that the information sought would soon filter back to the Company president, as did letters of withdrawal which were actually procured. In light of these factors and the fact that this interrogat ion was part of a pattern of conduct aimed at causing the withdrawal of cards, it is my conclusion that Verbert's questioning offends both the Board rule and the Bourne rule.

turned the letters into the Company office for mailing, where their presence came to the notice of the Company president. Romer also requested an employee to complete his application for withdrawal of a designation card, so the letter could be forwarded to the Union in proper form. Romer also solicited the help of another employee in disseminating information designed to assist employees in withdrawing union designation cards. Such activities constitute flagrant violations of Section 8(a)(1) of the Act, and I so find and conclude. American Compressed Steel Corporation, 146 NLRB 1463; Great Atlantic and Pacific Tea Corporation, 144 NLRB 1571; Miami Coca-Cola Bottling Company, 140 NLRB 1359; Brennan's French Restaurant, 129 NLRB 52; Alamo Express, Inc., 127 NLRB 1203; Reilly Tar and Chemical Corporation, 151 NLRB 1503.

2. The pre-election contest and prizes

The Board has had many occasions to consider the propriety and the legality of various forms of pre-election inducements used by both employers and unions in the course of representation election campaigns. Raffles conducted before an election and aimed at getting out the vote, where contestants merely had to vote to be eligible for the drawing, have been held not to be per se illegal or objectionable, but have in some recent instances been held to be a basis for setting aside an election because of the facts and circumstances of surrounding the contest. 10/ A contest was held to be objectionable which required employees to guess the number of "No" votes which would be cast at a forthcoming election. The Board reasoned that such a contest amounted to a poll of employee sentiment, and had the tendency to commit employees to a position in a carnival-like atmosphere inimical to the holding of a fair and free election. 11/ The giving of a $5 Thanksgiving Day turkey to employees was held not to be objectionable conduct, 12/ and the giving of $2

10/ Olympic Products, Inc., 201 NLRB No. 64; Gibson Greeting Card Company, 177 NLRB 589; Hollywood Plastics, Inc., 177 NLRB 678; See also Electro-Voice, Inc., 191 NLRB 425.
11/ Glamorize Foundations, Inc., 197 NLRB No. 108.
12/ Jacqueline Cochran, Inc., 177 NLRB 837.

to employees as lunch money to attend a pre-election meeting has also passed muster. 13/ However, giving employees cloth bags each containing 105 pennies, with the statement that the enclosed coins constituted an average cost per hour to the company of current fringe benefits, and coupling this handout with a "Vote No" message, was construed to be a threat of loss of benefits. 14/ The Board also held that it was a violation of Section 8(a) (1) of the Act for an employer, a week before an election, to release employees from work early and to permit them to purchase from the employer for their personal use, at substantial discounts, various pieces of material produced by the employer. 15/ The granting of pre-election increases in wages and benefits is not a violation of the Act where it can be shown that such increases arepart of a recurring pattern of wage increases which just happen to come about in their regular course during a pre-election period. However, when an employer grants any benefit during a union campaign which is calculated to influence the outcome of the election, such conduct is clearly violative of the Act. N. L. R. B. v. Exchange Parts, Inc., 375 U.S. 405 (1964).

The Supreme Court very recently set aside a long-standing Board policy of permitting unions to utilize as a campaign tactic the waiving of initiation fees to encourage employees to select it as a bargaining agent. The Court did so by denying enforcement of a bargaining order in a card majority case in which the union had solicited recognition slips with the promise that those who signed slips before the election would not have to pay an initiation fee of $10, while employees who failed to take advantage of the pre-election offer would have to pay the fee if the union won the election. N. L. R. B. v. Savair Corporation, _____U.S._____, 94 S. Ct. 495 (decided Dec. 17, 1973). In Savair, the Court recalled its admonition in N. L. R. B. v. Tower, 329 U.S. 324 (1946), that it is the duty of the Board to establish the procedures and safeguards

13/ Jat Transportation Corporation, 131 NLRB 122.
14/ Standard Press Steel Company, 183 NLRB No. 33.
15/ Tunica Manufacturing Company, 182 NLRB 729.

necessary to insure the fair and free choice of bargaining representatives, and went on the say that it did not believe that "the statutory policy of fair elections prescribed in the Tower case permits endorsements, whether for or against the Union, to be bought and sold in this fashion." Supra, 94 S. Ct. 495, at 497. Thus the Supreme Court has recently reiterated its strong disdain for anything that smacks of vote buying in the selection of a bargaining agent. Its decision is grounded on considerations applicable to the Respondent's conduct in this case.

Calling upon employees to guess, for a prize, the highest Teamster fine and the longest Teamster strike, and announcing the winners before the election, is a gimmick which was sure to reward certain voters before the October 12 balloting and to enlist their paid public support and participation, before the election, in the employer's electioneering effort. The manifest and undeniable purpose of the gimmick, and of the $200 in prizes which it bestowed upon six bargaining unit employees, was to influence the outcome of the election both through economic inducements to the prize winners and moral inducements to others. When a traditional, old-line ward-heeler handed a voter a dollar bill rolled around a cigar and told him to vote the straight ticket, the practice was (and still is) generally referred to as election bribery. I see no reason to seek out a euphemism which would give the Respondent's conduct in this case any blander coloration. Any distinction between the sordid and usually secretive political practice known as vote buying, and what the Respondent perpetrated here in full view of his employees, has no meaningful difference. The message is the same and the means are identical, except for the inflationary amount of the consideration. As the General Counsel did not specify this conduct in the Complaint to be a separate violation of the Act, I will not find it as such, but I do find and conclude that it is evidence of strong anti-union animus as well as pre-election misconduct which has a direct bearing on the appropriateness of the remedy in this case.

3. Grout's threats of reprisal

If we rely only upon Grout's version of Grout's election-eve speeches of October 10 and 11 to the electorate in this plant, there filters through the strong aroma of swift and sure reprisal for supporting the union. Despite an attack of laryngitis, Grout delivered on these two occasions what may best be described as a piece of flamboyant demagoguery. While professing to give his employees a low-key recital of reasons to vote no, Grout made reference to a flood of company handouts which were definitely hard sell. He reminded voters that with a union they might wind up with less than they have now. He spoke of the possibility of replacement during a strike, and mentioned that others who opted for unionization have wound up with a strike in which some lost their jobs and pre-strike benefits. While stating that there would be no reprisals taken against any employee by the Company because of the union activities, he characterized past union support as a mistake which could be corrected in the privacy of the ballot box. He said that the Company would never agree to anything it could not afford, and raised the spectre of frozen wages and benefits during protracted negotiations in lieu of annual raises. He also stated flatly that the Company could not afford a union because of basic economics involving location, costs of transportation, and other competitive disadvantages. It was Grout who brought up the question of whether the Company would sell the plant if the union won the election. He announced that two years ago the Company rejected offers to sell because of its sentimental attachment to the area and its sympathy with 60-odd employees whose families depended upon Monroe Tube for a job, but then went back to talking about the competitive disadvantages suffered by Monroe which would not permit it to operate under union conditions. "You can only cut a pie in so many pieces and then there is none left; there is only so much money to go around." He then made reference to an unnamed, and possibly non-existent, employee who suggested that if the company could not afford a union, then in the long run he might not have a job if the union came in. Grout's own reported phrase was: "Nothing to lose? I think you may be risking a lot....No union can guarantee your wages or your job, and no union can force me to agree to anything more than you already have

now, if I don't think our Company can afford to pay it. We have an obligation to negotiated in good faith, but you could wind up with less."

Any lingering doubt that the above-recited statement contains a threat to close the plant in the event of a union victory is removed by reference to recollections of Grout's remarks supplied by employees who heard the speech. These versions I fully credit. Cochran recalled that, after Grout announced the catalogue of disadvantages suffered by Monroe Tube vis-a-vis its competitors in other localities, he then said, "I leave it to your imagination what would happen if the Union was voted in." Cordero and employees on the night shift mentioned Grout's reference to his other business venture of making airplanes, a reference having meaning only in a context that Grout would be able to earn a living even if Monroe Tube were to be closed. Cordero also recalled Grout's phrase that he could sell the plant Monday morning regardless of what happened at the election on the preceding Friday. Grout was even less oblique in his remarks to the night shift. He simply told them he would close the plant if the union won the election. One employee, Hotaling, drew this conclusion from Grout's remarks so he went to Grout privately after the speech and asked him if this were true. Grout told Hotaling that he did not mean to convey this impression, and that what he really meant to say was that he would not permit a union to push him around. Grout did not make this same pre-election clarification to any other voter. Three months later, Grout wrote to all employees, stating that the Company would not close the plant if the union won, and that he never said that it would do so. Such statements by Grout simply tend to confirm the fact that Grout's pre-election speeches actually did contain these coercive statements. I also find that Hegedus, in his conversation with Mendoza and Vittum, threatened employees with plant closure in the event of a union victory. Having found that Grout threatened massed assemblies of employees with the closing of the plant if the union should win the forthcoming election and that Hegedus made similar statements, I conclude that the Respondent, by these remarks, violated Section 8(a)(1) of the Act.

4. Unit and unit placement

Any consideration of the Gissel remedy requested by the General Counsel must be predicated upon a demonstration by the General Counsel that, at some relevant point in time, the Union had been designated as the collective bargaining representative by a majority of the employees in an appropriately defined bargaining unit. In paragraph five of the Complaint, the General Counsel alleges the appropriate bargaining unit to be "all full-time and regular part-time production and maintenance employees of the Employer employed at its place of business located at Route 208, Monroe, New York, plant, exclusive of office clerical employees, foremen, professional employees, guards, watchmen and all supervisors as defined in Section 2(11) of the Act...." This definition of unit was formally denied by the Respondent in its Answer, but the Respondent offered neither evidence nor argument that any other unit description was appropriate. In a "stip" election agreement, dated September 17, 1973, which set the stage for the October 12 election, the Respondent agreed to hold an election in a unit so described. No citation of authority is required for the proposition that a single-plant production and maintenance unit, with the exclusions noted above, is both a conventional and a presumptively appropriate bargaining unit. As the Respondent agreed to an election in such a unit and has suggested no alternative unit, I find and conclude that the bargaining unit described above is an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act.

Although a description of the appropriate bargaining unit has been found, certain unit placement questions arise. The General Counsel, the Charging Party, and the Respondent agree that on Wednesday, August 15, 1973, the date selected by the General Counsel to measure majority status, this unit included some 44 named individuals. At the hearing, the parties disagreed as to the placement of Gabriel Mancuso, James Grillo, James W. Verbert, Albert Pinto. William F. McKiernan, Patricia Postiglione, Juliet Wood, and George Treutle. In his brief, the General Counsel conceded that Mancuso, Grillo, and Treutle should be included. Hence the inclusion or exclusion of the remainder of these employees must be individually addressed.

a. James Verbert is the night shift foreman. In this capacity, supervises about eight men who work each evening from 4:30 p.m. until one a.m. Verbert is a salaried employee, earns about 30 percent more than the average of production employees, and wears a blue supervisory uniform. 16/ While he works at machines from time to time, he is responsible for the job performance of night shift employees, allocating work among them as the evening progresses. He can correct employees in the performance of their duties. He reports to work shortly before the commencement of the night shift, receives instructions from Mill Foreman Charles Mancuso, and translates these requirements into specific job assignments for particular night shift employees. During a greater portion of the evening hours he is the highest ranking company employee on the premises and can excuse a night-shift employee who wishes to leave work early. He is generally referred to as the night foreman. Verbert is very clearly a supervisor within the meaning of Section 2(11) of the Act, so I exclude from the bargaining unit.

b. Al Pinto is a salaried employee who is in charge of the annealing, pointing, and pickling department. He wears a blue supervisory uniform and earns about 40 percent more than the average of production employees. He has about six men in his department to whom he gives wide discretion and can determine the priority of work to be performed in his department. From time to time, he performs manual labor, including shipments against bills of lading. About 25%-40% of his time is spent in doing manual labor. He reports to Charles Mancuso, the mill foreman, as to the quality of work and productivity in his department. He may also make a recommendation concerning the retention of a trainee assigned to him. He attends regular weekly management meetings. Pinto is clearly a supervisor within the meaning of Section 2(11) of the Act, so I exclude him from the bargaining unit.

16/ All of the employees in the production department are given industrial clothing to wear on the job. Respondent issues to leadmen and foremen blue pants and a blue jacket containing the individual's name tag. Pinto and Crane were among those who now wear such jackets. Crane wore one to the hearing, although he was a rank-and-file production operator in August when the organizing drive began. Rank-and-file production employees are issued pants and

c. William F. McKiernan is no longer employed by the Respondent. In August, 1973, he was in charge of the warehouse department, and as such supervised the cutting of tubes and other work by some 14 warehouse department employees. By this is meant that he assigned cutting work to other employees and was responsible for any mistakes they might make. In supervising others, he exercised independent judgment. He also did a considerable amount of physical work himself. He reported to the Plant Manager, John Romer, from whom he received production orders, rather than to the Mill Foreman Charles Mancuso. He did not wear a uniform to work, but instead wore street clothing. At one time he had a desk in the Company office. He attended the weekly management meetings. I conclude that McKiernan was a supervisor within the meaning of Section 2(11) of the Act on August 15, 1973, so I exclude him from the bargaining unit.

d. The Company maintains its general office in a building located about 100 yards from the production plant. Next to the production plant there is a connected office area consisting of three rooms. One room is occupied by Plant Manager John Romer. An adjacent room is occupied by two clerical employees, Patricia Postiglione and Juliet Wood. General Counsel contends that Mrs. Postiglione and Mrs. Wood should be excluded from the unit, 17/ while the Respondent contends that both women are plant clerical employees who should be included in a unit of production and maintenance employees. 18/ Regular day-shift production employees work in one of four departments and report to a foreman in that department. Mrs. Postiglione and Mrs. Wood work directly under Plant Manager Romer, who occupies the next office; they report directly to him rather than to a first-line production supervisor. They are engaged exclusively in a clerical function and utilize only clerical skills. They

16/ (Continued) jackets which are similar in style but green in color. The blue uniform is clearly an indicia of supervisory authority in this plant.

17/ The established policy of the Board is to exclude office clerical employees from production and maintenance units. Giordano Lumber Company, Inc., 133 NLRB 307; The F.&M. Schaeffer Brewing Company, 198 NLRB No. 46. U.S. Postal Service, 200 NLRB No. 162.

18/ See, for example, Monarch Machine Tool Co., 154 NLRB 104; Western Gear

perform no manual labor. They process mail, orders, and other paperwork. Mr. Wood is salaried and Mrs. Postiglione is hourly-rated, but neither punches the regular employee timeclock. Their hours are slightly different from unit production employees. They do not enter the production area in the performance of their duties and have no contact with unit employees, except for the cleaning man and an occasional visit to the office from shipping employee Grillo. Their normal daily contacts are with the main company office by phone, with company supervisors who are located in the production plant, or with persons outside the plant. Mrs. Wood's principal function is to contact trucking firms with which the Respondent does business to insure that transport is available for the shipment of finished products. She contacts such companies upon instruction from Plant Manager Romer, types invoices, and does other typing relating to the production process as assigned. Mrs. Postiglione handles the overflow work which Mrs. Wood is unable to handle. She occasionally types reports and memoranda dispatched by the Plant Superintendent Monks to the Company President Grout. Unlike production employees, they wear normal street clothing to the job. Their skills are interchangeable with skills exercised by other clericals located in the main company office, although they did not begin an actual interchange of duties until recently. As their duties, skills, locations, compensation, supervision, and hours differ from those of regular production employees and no occasion to visit the production area in the performance of their duties, I perceive no community of interest between Mrs. Wood and Mrs. Postiglione and unit employees. Accordingly, I exclude them from the bargaining unit. The F.&M. Schaeffer Brewing Company, supra; Diamond Mills Corp., 123 NLRB 1795.

In sum, I conclude that the appropriate bargaining unit on August 15, 1973 should include 47 employees.

18/ (Continued) Corporation, 160 NLRB 272; Conchemco, Incorporated, 182 NLRB 125; Maryland Cup Corporation, 171 NLRB 367.

5. Authorization Cards and Majority Status

In the organizing drive conducted among the employees of the Respondent, the Union utilized cards which, on their fact, clearly and unambiguously designate it as the collective bargaining representative of the individual signers of the cards. 19/ No challenge has been levelled by the Respondent to the effectiveness of the language contained on the cards in designating the Union as a bargaining agent. The cards of seventeen unit employees out of a total of twenty-four necessary to constitute a majority on August 15 were admitted into evidence without objection by the Respondent. The validity of the remainder in establishing majority status on the critical date are discussed below.

As noted above, the cards of all employees upon which the General Counsel relies, except those of Kevin Ranck, John Fortune, and James Smith, 20/ bear a time and date stamp of the Board's Second Region showing their submission to that office on August 16, 1973. Such cards were submitted by the Union in support of a petition filed on that date in an earlier representation case (Case No. 2-RC-16242). This petition was withdrawn and another petition

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19/ The cards read:

International Brotherhood of Teamsters, Local 445
2 Post Stree, Yonkers, New York
Authorization for Representation Under the National Labor Relations Act
I, the undersigned employee of the
Employed as _____

Home Address _____
Hereby authorize the International Brotherhood of Teamsters, Local 445, to represent me and, in my behalf, for the purposes of collective bargaining to negotiate and conclude all agreements in respect to rates of pay, wages, hours of employment, or other conditions of employment in accordance with the provisions of the National Labor Relations Act.

(Continued)

was later submitted in the instant case. The earlier designation cards as well as some additional cards were used to provide a showing of interest to support the second petition. The additional cards were executed after Cordero had turned in the first batch to Union Business Agent Ebert on August 11. Ebert credibly testified that all of the cards bearing the Board's August 16 time-date stamp were delivered to him at his home by Cordero on Saturday, August 11 and that they were in the Union's possession from August 11 until they were filed with the Second Region on August 16. From this evidence I conclude that the date of execution of any cards bearing the Board's August 16 stamp occurred on or before August 11, 1973. 21/

a. Respondent objected to the admission of the designation card of employee Willard Carrigan because the solicitor who authenticated the card at the hearing, employee Thomas G. Cochran, assertedly testified ambiguously as to the date of execution and because the card itself contained no handwritten date of execution. Cochran testified credibly and without contradiction that Carrigan signed the card in his personal presence outside the Respondent's plant on August 7. The card was immediately returned by Carrigan to Cochran who kept it for a few days and then turned it over to Cordero. The card proffered by the General Counsel bears the Board's August 16 time-date stamp and was

19/ (Continued)

> The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me and shall remain in full force and effect for one year from date and thereafter subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.
>
> (Signature of Employer)_____
>
> Date_____

20/ Smith's card, dated August 13, was admitted without objections.

21/ I take official notice of the time-date stamp of the Board's Second Regional Office. See Fabricators, Inc., 168 NLRB 140; Area Disposal, Inc., 200 NLRB No. 54.

part of the batch submitted by Cordero to Ebert on August 11, and by the Union to the Board on August 16.

Cochran testified that, later on, he met with Union officials at the American Legion Hall in Monroe, at which time Ebert brought to his attention the fact that Carrigan's card was undated. The union officials reportedly had the cards with them at this time. The conversation presumably occurred in the interval between the time when the petition in Case No. 2-RC-16242 was withdrawn and the cards returned, and September 6, when thepetition in the instant case was filed and the cards were resubmitted to the Board. Because of Cochran's testimony, Respondent objected to the admission of G. C. Exhibit 6, asserting that the proffered exhibit was not the same card that Carrigan signed on August 7 and which Cochran turned over to Cordero for submission to Union officials. Carrigan did not testify. Cochran testified positively that the proffered exhibit was in fact the card which Carrigan signed on August 7. The presence of the Board's August 16 stamp corroborates this testimony. I find as a fact that G.C. Exhibit 6 is the card which Carrigan signed on August 7, and conclude from this fact that it should be counted in determining the Union's majority status on August 15.

b. Respondent objected to the introduction of the card of employee Harold Haight. Haight's card was also introduced through the testimony of solicitor Cochran. Like Carrigan's card, Haight's card bears no handwritten date on its face but does bear the Board's August 16 time-date stamp on the back. Cochran did not remember the precise date on which he obtained Haight's signature, but does recall definitely that it occurred before Company President Crout's first speech to employees, an event which has been fixed as having occurred on Friday, August 10. Cochran testified without contradiction he went over to Haight, asked Haight if he would sign a card, and handed him the card. Cochran asked Haight to read the card, whereupon Haight did read it and signed it in Cochran's presence. The Respondent's objection to the admissibility of the card was on the premise that Cochran could not recall the situation at the time he solicited Haight's card. In fact, Cochran's recollection was quite lucid and

positive. Moreover, the timeliness of the card is corroborated by the Board's August 16 time-date stamp. Respondent presented no justifiable basis for excluding Haight's card, so I will include it for purposes of determining the Union's majority status as of August 15.

c. Respondent objected to the introduction of a card purporting to be a designation of the Union by Salvatore LaSpina but which was in fact signed on Salvatore's behalf by his son, Rosario (Rose) LaSpina. The uncontradicted testimony in the record shows that Cochran approached both LaSpinas at or near their work station in the plant. He asked Rose LaSpina to sign a union card and made the same request of Salvatore. Salvatore speaks Italian but speaks little or no English. However, it is plain from his appearance on the stand and his testimony that Rose LaSpina speaks, reads, and understands English. When Cochran presented the cards to the LaSpinas, Rose read his card and then signed it. At this time, Rose spoke to his father in Italian and explained to him what the card meant. He also read the card to him. Then his father told Rose in Italian to go ahead and sign a card on his behalf, so Rose signed Salvatore's name to the card in Salvatore's presence.

There is no requirement in the Act that an employee be able to speak or read English in order to avail himself of the benefits of the Act. The only requirement respecting the validity of the card of an employee who does not read at all, or who does not read English, is that the purpose of the card be adequately communicated to the employee whose card is in question. Benson Veneer Company, Inc., 156 NLRB 782; Yazoo Valley Electric Power Association, 163 NLRB 177; River Togs, Inc., 160 NLRB 58; N. L. R. B. v. A. J. Krajewski Manufacturing Company, 413 F. 2d 673, 677 (C.A. 1, 1969). It is clear to me that Rose LaSpina communicated the significance of the designation card to his father on the occasion in question and that, in signing the card on his father's behalf, he acted as his father's amenuensis and with his father's express permission. Peterson Brothers, Inc., 144 NLRB 679. Rose's card was ultimately admitted without objection, and there is no contention Rose himself did not understand the purpose of the card. Nor is there any suggestion that he misrepresented the contents of the card to his father. Accordingly, I conclude that the card of

Salvatore LaSpina should be counted in determining the Union's majority status as of the critical date.

d. Respondent objected to the admission of the card of John Fortune on the ground that the signature of Fortune on the card had not been verified, and also on the ground that the card should not be counted because it had not been transmitted to the possession of the Union until after the critical date. Fortune's card was introduced by the General Counsel through the testimony of Jose Cordero, one of the Union's principal in-house organizers. Cordero testified credibly and without contradiction that, on August 13, the same day on which he gave Jimmy Smith a card, he also gave Fortune a card. Smith's card, admitted without objection, contains the date of August 13, a Monday. Fortune's card has the same date written on the face of the card in pencil. Both Smith and Fortune worked in the same locality in the plant, so Cordero handed them both a card at the 2:30 p.m. work break. Cordero believes that Fortune returned the card to him the following day, August 14. When Fortune did return the card, it was already filled out, both as to signature, date, and address of the employee. Cordero retained Fortune's card in his possession and turned it into Union officials sometime early in September.

Cordero was the Union's agent for the solicitation of cards and hence was its agent for purposes accepting delivery. Accordingly, since the record establishes that the card was in Cordero's possession on the critical date, it was in the possession of the Union for purposes of determining the designation of the Union as Fortune's bargaining representative. There is no requirement in the law that the sponsor of a card testify that he actually witnessed the signing of the card by the employee in question, so long as the employee, as here, returns the card to the sponsor with his signature appropriately filled in. There is no reason to believe that the signature contained on Fortune's card is other than Fortune's own signature. Fortune was not summoned by the Respondent to contradict Cordero's version of the signing of the card or to repudiate his signature. Accordingly, I will count Fortune's card in determining the Union's majority on August 15. Gordon Manufacturing Company, 158 NLRB 1303.

e. The Respondent objected to the introduction of the card of former employee Kevin Ranck. Ranck's card bears the handwritten date of August 14, one day before the critical date for determination of majority status. The parties stipulated that Ranck was an employee on Wednesday, August 15, but it appears from the record that Ranck quit the Respondent at the end of the week. Ranck personally identified his card and testified that he returned it to employee Cordero immediately after signing it. Before he quit, he asked Cordero to return his card, but Cordero told him that he had already turned it in. His reason for wanting the card back was that he was quitting his employment. He testified further that a couple of days had elapsed from the date of signing until the date on which he asked Cordero for the return of the card. Respondent objected to the use of the card in determining majority because Ranck had asked for the return of the card. 22/ It clearly appears as an uncontroverted fact that, as of August 15, Ranck had not asked for the return of his card, so that, on this date, the card should be counted in determining majority status. McEwen Manufacturing Company, 172 NLRB 990. Moreover, as discussed above, requests by employees to return their cards were prompted by previous employer unfair labor practices, so any such requests should not be given the legal effect of diminishing the Union's majority as of August 15. Quality Markets, Inc. 160 NLRB 44; S.E. Nichols-Dover, Inc., 167 NLRB 832, enf'd 414 F. 2d. 561 (C.A. 3, 1969)

f. Former employee Charles Drake, a cutoff machine operator, personally identified his card and testified that he signed it and dated it on August 9, 1973. He had a number of cards in his possession that were given to him by Michael Crane, now a supervisor but then a non-supervisory machine operator. Crane asked Drake to pass the cards around to other operators in the cutting department. According to Drake, Crane told him that a majority of cards were necessary to get the union in at the plant, and that later there would

22/ Cordero denies that Ranck asked for his card back.

be a vote. In response to a question posed by Respondent's counsel, "You say that (an election) was the only purpose of this card?," Drake replied, "Yes." Drake testified that he read the card before he signed it, stated that Crane asked him when he handed him the card whether he would like to join the union, and that Crane told him that they would need the cards of more than fifty percent of the employees to have the union come in, so Drake signed. In response to another question by Respondent's counsel as to whether there was a discussion about voting or elections, Drake replied that Crane said that he first had to get a majority and then "you will have an election, a vote for the union whether they are going to come in or not." Drake also testified he signed the card with the sole intent of joining the union. While Drake asserts that Crane told him that they would have to get fifty-one percent of the cards for the union to come in "and we will have a voting election," Crane did not in fact tell Drake that the sole and only purpose of the card was to have an election. Based on the vacillating testimony of Drake's, 23/ Respondent asked that his card not be counted because it was the product of a misrepresentation as to the nature and purpose of the card within the meaning of Cumberland Shoe doctrine. 24/

Under the Cumberland Shoe doctrine, if the solicitor of a union designation card, clear and unambiguous on its face, misrepresents to a prospective signer that the sole and exclusive purpose of the card is to obtain a representation election, such misrepresentation nullifies the validity of the card as a basis for determining majority status. In expressing its approval of the Board's Cumberland Shoe doctrine, the Supreme Court was most emphatic in narrowing the type of misrepresentation which could be used to negate the effect of an otherwise plainly worded grant of bargaining rights by an employee. The Court said:

"In resolving the conflict among the circuits in favor of

23/ Crane appeared as a witness but no questions were put to him respecting Drake's card.

24/ 144 NLRB 1269

approving the Board's Cumberland rule, we think it sufficient to point out that employees should be bound by the clear language of what they sign unless that language is deliberately and clearly cancelled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election." N. L. R. B. v. Gissel Packing Company, 395 U.S. 575, at 606, 607 (1969).

The testimony of Drake, summarized above, presents a vignette illustrating this holding of the Supreme Court. A suggestion during Drake's testimony that Crane may have misrepresented to him the nature and purpose of the card, within the confines of the Cumberland Shoe rule, may eminate from questions posed to the witness but not from the words uttered by Drake himself. When the direct question was put to him as to whether Crane ever told him that the sole and exclusive purpose of the card was to get an election, Drake replied in the negative and Crane was never asked to contradict him. Accordingly, I conclude that the Union did not misrepresent to Drake the nature and purpose of the clearly-worded card which he signed, so his card should be counted.

g. The same rationale applied to Drake's card should be applied to the one signed by Crane. Crane identified the card which he signed and testified that he believed he signed the card in August. He stated that he signed the card, which bears a date of 7/13, before any of Company President Grout's speeches, both of which have been fixed definitely as having been given on August 10 and August 15 respectively. Crane obtained the card he signed from fellow employee Cochran along with 15 or 20 other cards which were given to him by Cochran to pass out to others. Crane also testified that Cochran asked him to get some cards signed so that "we can have an election in the plant." Cochran did not tell Crane that the cards were just for an election. 25/ Crane gave some cards to employee Charles Rosenstock and asked him to get some signatures. He does not think that he told Rosenstock anything about the purpose of cards when he gave them to him. Giving Crane's testimony full credence, something it does not deserve, there is no evidence in the record that Cochran or anyone

else said to Crane that the only purpose in signing the union designation card was to get an election. Crane testified that he thought that such was the purpose of the card even though the card itself does not say so.

In determining validity for card majority purposes, the Board does not utilize the testimonial utterances of card signers as to their subjective understanding of the meaning of the card at the time they signed. Jack and Jill Stores, Inc., 178 NLRB 458; Marie Phillips, Inc., 178 NLRB 340; Scoler's, Inc., 192 NLRB 248, enf'd 466 F. 2d 1289 (C.A. 2, 1972); See also N.L.R.B. v. Snyder Tank Co., 428 F. 2d 1348 (C.A. 2, 1970). The Supreme Court scored any attempts to do so in Gissel when it stated:

> We agree, however, with the Board's own warnings in Levi Strauss, 172 NLRB No. 57, and n. 7 (1968), that in hearing testimony concerning a card challenge, trial examiners should not neglect their obligation to ensure employee free choice by a too easy mechanical application of the Cumberland rule. We also accept the observation that employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union, particularly where company officials have previously threatened reprisals for union activities in violation of Section 8(a)(1). We therefore reject any rule that requires a probe of an employee's subjective modifications as involving an endless and unreliable inquiry." 395 U.S. 575, at 607, 608 (1969).

We are dealing with the testimony of a newly-promoted supervisor who now finds himself on the spot, caught between what he admittedly did for the Union in August as a rank-and-file employee and his present obligations as a

25/ Cochran was brought back to the stand by the General Counsel after Crane testified. At this time he testified that he explained to Crane that, in order to bring the union into the plant, the union adherents needed a majority of the signatures on cards-"we needed at least 51 percent in order to get the union into the shop." When Crane appeared to Cochran to be under the impression that an election was necessary, come what may, before a union could win bargaining rights, Cochran pointed out to Crane that such was not the purpose of the card. Cochran, the employee who supplied Crane with designation cards he distributed, denies ever having said anything to Crane about using the cards just to get an election. Cochran's instructions were simply to get a majority of the cards signed and returned to Business Agent Ebert. Initially he was not himself aware of what procedure would be used. In his testimony on this point, Crane was not positive while Cochran was. I credit Cochran.

part of a management team which is stridently hostile to the idea of employee organization. Like Hicks and Rosenstock, Crane gave vacillating testimony as his way of availing himself of Grout's indulgence to card signers who had made a mistake. Accordingly, I discount Crane's present version of his previous misunderstanding concerning the nature and effect of the card he signed as involving "endless and unreliable inquiry," immaterial to the issue here at hand, and so determine to count Crane's card.

h. Respondent objected to the introduction of the card of employee David Hicks on the basis of the Cumberland Shoe rule, and the undersigned initially sustained this objection. Hicks testified that he signed a card at the men's room in the plant on August 8. The card had been presented to him by fellow employee Charles. He returned it to Rosenstock immediately. Hicks further testified that he read the card before signing it and that Rosenstock said to him, before he signed the card, that his signature was needed because "we needed 51 percent of the men to sign the cards so we can have a vote for representation of Local 445." In response to a question by counsel as to whether Rosenstock made any statement concerning the sole or only purpose of the card, Hicks replied "No", stating that Rosenstock told him the card was needed because "we needed 51 percent of the vote so the men could have the vote." In response to another question, Hicks could not recall if Rosenstock said that the sole or only purpose of the card was to obtain a vote but that such was his personal belief or impression. Rosenstock simply had not mentioned any other purpose for the card in what was a short and hurried conversation. After voir dire on his card was completed, Hicks' further testimony was then punctuated with evidence to the effect that Foreman James Verbert, with whom he rides to work, discussed with him the possibility of Hicks' seeking the return of his card. Hicks in fact gave Verbert a letter to the Union which he composed seeking the return of the card, and received from John Romer a photostatic copy of the letter. There was also testimony to the effect that before the hearing, Respondent's counsel required of Hicks in detail as to the circumstances surrounding the signing of his card and his conversation with Rosenstock immediately preceeding the signing of the card. In rebuttal the General Counsel

brought in evidence to the effect that, at or about the time of the election. Hicks was promoted to the position of assistant foreman. All of these circumstances provide further exemplifications of the situations illustrated in two cases cited by the Board in footnote 13 to its decision in Levi Strauss & Co., 172 NLRB 732, at 735:

> "See N. L. R. B. v. Southbridge Sheet Metal Works, Inc., 380 F. 2d 85, (C.A. 1), where the court stated; 'Moreover, that vacillating testimony of employees in the hearing, held almost a year after the organizing compaign concluded, under scrutiny of company counsel and officials, illustrates the wisdom of requiring fairly strong evidence of misrepresentation and evidence of communication and recantation before cards secured at a much earlier date are adjudged invalid.' And see N. L. R. B. v. Preston Products, supra, where the Court of Appeals for the District of Columbia stated: '. . . we have here the classic case of employees testifying under the eye of the company officials about events which occurred almost a year before and prior to the activities which were subsequently found to constitute unfair labor practices. It is certainly conceivable that those same threats and benefits which shook an employee's original support for the union also altered that employee's memory as to events which occurred before the presentation of such threats and benefits. By the time of the hearing the employees may well have changed their mind with respect to union affiliation, but the crucial question in a refusal to bargain case is whether the union had the support of a majority of the employees in an appropriate bargaining unit at the time the request to bargain was made, and not whether that support remains intact some ten months later."

Based on evidence adduced after my ruling at the hearing excluding Hicks' card, the General Counsel moved again to introduce Hicks' card, and that motion was taken under advisement. The evidence dramatically weakened the reliability of Hicks' testimony. In response to questions by the undersigned, Hicks indicated that this misunderstanding was that the only purpose to be served by a card was to obtain an election. A review of the precedents cited above since the time of the hearing convinces me that questions called for information which is basically immaterial to the Cumberland Shoe rule, a rule which deals not with the subjective understanding or misunderstanding of a witness but with active misrepresentation by a card solicitor.

A review of exactly what Hicks stated further indicates that, whatever his personal misunderstanding of the effect of the card might have been, such understanding was not the product of a misrepresentation concerning its significance by Rosenstock, the solicitor, or any other person. Accordingly, I hereby grant the General Counsel's motion, admit the card into evidence, and will count it toward determining the Union's majority status on August 15.

i. Respondent also objected to the introduction of the card of Charles Rosenstock on the basis of Cumberland Shoe. Rosenstock personally identified the card that he signed at the hearing, and stated that he signed it on August 8. He stated that he had read or at least glanced through the card before he signed it, but recalls reading the portion of the card which stated that he wished to be represented by Local 445. The card in question had been given to him by Michael Crane; however Rosenstock returned it to Cordero. Rosenstock gave cards to Hicks and employee Terry Nowak, another card signer.

As no timely request for sequestration was made in this case, Rosenstock was present in the hearing room during the testimony of Hicks and Drake relating to the Cumberland Shoe issues and listened to the factual and legal discussions on this matter. He thereafter testified that Crane gave him a couple of cards and that "these cards were just for the majority of the company and they had signed them. They would have an election for a union. They were not union cards as such that if you signed them you automatically were a union member." He repeated that Crane told him that the purpose of the card was that if the majority of the pwople in the company signed this card, then there would be an election for the union or against the union. In response to a question as to Crane he said that such was the only purpose of the card, Rosenstock replied, "That is all Mr. Michael Crane said to me at that time." Rosenstock later stated that Crane told him that the card meant nothing and that getting an election was all that the card was meant to be.

After the undersigned rejected the initial proffer of Rosenstock's card, Rosenstock testified, as recited supra, that his foreman, Verbert,

asked him whether he had signed a card and suggested to him that he write a letter revoking the card. Verbert offered to get the address for Rosenstock if he should desire to obtain the revocation of his card. Rosenstock wrote a letter asking for the return of his card and gave it to Verbert to be mailed. Nowak later was recalled to testify that Verbert had admitted talking with Rosenstock on this subject, and said that he saw them together for about an hour a few weeks before the election, talking in the Company office. After Rosenstock's testimony was taken, Crane, the person who furnished Rosenstock with union cards, stated that he gave Rosenstock the cards and asked him to give them out and see if he could get any signatures. Crane said that he did not think that he said anything else to Rosenstock.

In light of the post-rejection testimony given by Rosenstock himself, and which seriously impeached Rosenstock as a witness as well as the vacillating nature of Rosenstock's version of Crane's statements relative to the purpose of the cards, I have concluded that Rosenstock's initial testimony on this subject is too unreliable to base a finding of misrepresentation under the Cumberland Shoe rule. Accordingly, I discredit it, and in so doing, grant the General Counsel's motion made at the end of the hearing to admit Rosenstock's card and to count it for purposes of determining Union majority status on August 15.

In sum I find that, on August 15, 1973, the Union had obtained 26 valid designation cards in a bargaining unit composed of 47 of the Respondent's employees. Thus a necessary premise has been established by the General Counsel for requesting that a bargaining order be issued under the rule of the Gissel case to remedy the violations of Section 8(a)(1) committed by the Respondent which have been found herein.

Upon the foregoing findings of fact, and upon the entire record herein considered as a whole, I make the following:

II. Conclusions of Law

1. Monroe Tube Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), 2(6), and 2(7) of the Act.

2. Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By encouraging and assisting employees to withdraw their union disignation cards, by interrogating employees concerning their union activities and union sentiments, and by threatening to close the plant if the union should win a representation election, the Respondent herein violated Section 8(a) (1) of the Act.

4. All full-time and regular part-time production and maintenance employees of the Respondent employed at its Monroe, New York, plant, exclusive of office clerical employees, foremen, professional employees, guards, watchmen, and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

5. Since August 15, 1973, Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has been and continues to be the exclusive representative of all employees of the Respondent in the unit found appropriate in Conclusion of Law Number 4, within the meaning of Section 9(a) of the Act.

6. The unfair labor practices recited above in Conclusion of Law Number 3 have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(6) and 2(7) of the Act.

III. Remedy

Having found that the Respondent has committed certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take other actions designed to effectuate the purposes and the policies of the Act. As noted before, the General Counsel requests an order that the Respondent be required to recognize the Union and to bargain collectively with it. Such a remedy was approved by the Supreme Court in Gissel, and has been ordered by the Board and sustained by the courts on many occasions since Gissel. See, for example, Byrne Dairy, Inc. v. N.L.R.B., 431 F. 2d, 870 (C.A. 2, 1970);

N. L. R. B. v. International Metal Specialties, Inc., 433 F. 2d. 870 (C.A. 2, 1970); N. L. R. B. v. Marcellus Vault & Sales, Inc., 431 F. 2d. 933 (C.A. 2, 1970); M. P. C. Restaurant Corporation v. N. L. R. B., 481 F. 2d 75 (C.A. 2, 1973); N. L. R. B. v. Scoler's, Inc., 466 F. 2d. 1289 (C.A. 2, 1972); N. L. R. B. v. Hendel Manufacturing Company, Inc., 483 F. 2d. 353 (C.A. 2, 1973). A Gissel remedy is appropriate to remedy an 8(a)(5) violation and, as here, to remedy certain violations of Section 8(a) (1) of the Act. 26/ Contrary to the Respondent's contention, the test of appropriateness of a Gissel remedy is not whether it is necessary to restore a status quo when viewed in some abstract sense, but whether the unlawful conduct of the employer in resisting unionization has been so flagrant and his violations of the Act so pervasive that the likelihood of running a free and fair election under "laboratory conditions" 27/ has been impaired.

In the present case, the employer in question conducted an all-out anti-union compaign from the inception of the organizational drive, by means which have long been proscribed by the Act and by Board and court decisions thereunder. The effort to convince and assist employees to withdraw union cards which they signed was the opening gun to a drive in which both lawful and unlawful methods became so intertwined as to be virtually inseparable one from the other. Interrogation and threats by foremen went hand-in-hand with a torrent of written propaganda which, when viewed in isolation, might stand up under scrutiny. Respondent's pre-election vote-buying effort, conducted under the guise of a contest, has further detracted from the likelihood that a fair and free election can be run at this plant. But the act and deed of the Respondent which compels rather than merely suggests the necessity of a Gissel remedy under the criteria announced by the Supreme Court, was the speech which the Company president delivered to the entire bargaining unit just before the election,

26/ The General Counsel here did not allege a violation of Section 8(a)(5) of the Act, although such was contained in the Union's charge, because the Union did not make a formal demand for recognition on August 15 or thereafter.

27/ General Shoe Corporation, 77 NLRB 124, at 127. The phrase "laboratory conditions" was used by the Supreme Court in its Gissel decision, 395 U.S. 575, at 612 (1969).

in which he gave all to know that a union victory was tantamount to closing the plant. I can conceive of no action short of physical mayhem which was a more destructive and pervasive effect on the laboratory conditions necessary for a fair and free election than remarks such as these, especially when uttered to the entirety of the electorate by the highest company official.

In opposing a Gissel remedy, Respondent advan ces several arguments. First, it states that the underlying unlawful conduct upon which a Gissel remedy is premised must occur at the time when a union enjoys a majority status. In this connection it argues that, even if the Union enjoyed majority status on August 15, it had no majority status (or at least none discernible from the record) on Ocotber 10 and 11 when Grout spoke. This contention is in error. The Supreme Court stated in Gissel:

> "We have long held that the Board is not limited to a cease and desist order in such cases, but has the authority to issue a bargaining order without first requiring the union to show that it has been able to maintain its majority status. See N. L. R. B. v. Katz, 369 U.S. 736, 738, n. 16 (1962); N. L. R. B. v. P. Lorillard Co. 314 U.S. 512 (1942). And we have held that the Board has the same authority even where it is clear that the union, which once had possession of cards from a majority of the employees, represents only a minority when the bargaining order is entered. Franks Bros. Co. v. N. L. R. B. 321 U.S. 702 (1943)." Gissel, supra, 395 U.S. 595, at 610.

The Respondent also appeals to the discretion of the Board by urging that it order a "traditional" remedy (presumably a re-run election) rathat than a bargaining order because of the nature of the facts in this case. It should be noted that bargaining orders are every bit as "traditional" in Board practice as are representation elections, even though their use over the years has not been a s widespread as representation elections. See Levi Strauss & Co., 172 NLRB 732, 734, fn. 9. Respondent points to an employee petition circulated in the bargaining unit about two weeks after the election by Joseph Vecchio, a post straightener at Monroe Tube. The petition is single, soiled sheet of paper on which Vecchio obtained the signatures of large numbers of employees and supervisors, and which bears the legend: "We the men of Monroe Tube Company do not want to have a union at Monroe Tube Company."

It clearly appears from Vecchio's pre-trial affidavit that, in soliciting signatures, he told many employees that the pending post-election objections and charges would prevent the Company from giving any Christmas bonuses or other wage improvements. 28/ Respondent also urges that I consider the subjective reactions of employees of Grout's speech in determining whether the air is now clear enough for a re-run election to be held. Leaving aside the questionable tactics used by Vecchio in circulating his post-election petition, the petition, as well as any sounding that I might make by sampling of employees opinion in the course of hearing testimony in this case, suffer from the same deviciency as does a re-run re-election. They all beg the basic question here at issue, namely, whether the actions of the Respondent before the election have so poisoned the atmosphere that any post-election poll, whether taken by the Regional Office in a conventional election, by an employee in circulating a petition, or by the undersigned in hearing witnesses brought to the stand, can serve as a reliable indicator of what employee sentiment might be if untainted by pervasive unfair labor practices.

As precedent for its contention that a bargaining order is inappropriate, Respondent points to a case which was one of the original Gissel foursome, General Steel, and urges it as authority for a discretionary denial of a bargaining order and the direction of a second election, together with a conventional cease-and-desist order directed toward 8(a)(1) conduct. General Steel had a history of litigation equalled or surpassed in duration by very few Board cases. When that case finally came to rest, on remand after a second opinion from the Fourth Circuit, 29/ the Board was faced with a practical problem of prescribing a remedy in 1972 for unfair labor practices which occurred in 1964. In light of

28/ In assessing Vecchio's credibility, I would regard him as one of the most unreliable persons I have ever seen in a witness box.

29/ 445 F. 2d. 1350 (1971)

such circumstances, the Board issued an 8(a)(1) order and directed a second election rather than issue a bargaining order. 30/ General Steel is no precedent for this case. Like the paths of glory, the course of all litigation leads but to the grave. There are few effects of unfair labor practices which cannot be laid to rest simply by the passage of time, if we wait long enough. But we are not faced here with a situation where both the victims and the beneficiaries in the original dispute have all died or disappeared. At Monroe Tube, memories are still fresh, wounds are still deep, and tears are still hot.

Lastly, Respondent seeks to avoid a Gissel remedy on the basis that any original fault on its part has been cured by a letter which was sent out by the Respondent three months after the election and which reached its employees shortly before the hearing. In this letter, quoted above, Grout makes reference to the charge that he threatened to close the plant if the union came in, and tells the bargaining unit 1) that he never said it, and 2)he did not mean it. Thus Respondent feels that it should b e permitted to avoid a bargaining order simply by saying it is sorry. If this is true, then any employer may violate the Act with abandon, reap the fruits of its lawless action be decimating an organizing campaign and winning an election, and then, after the election, avoid any adverse consequences of its behavior by "taking back" everything it previously said or did. I do not think that this is what the Supreme Court had in mind when it announced the Gissel decision.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:31/

30/ General Steel Products, A Division of the Seng Company, 199 NLRB No. 121. See also two other cases which were in progress during the period of the Gissel litigation - N. L. R. B. v. American Cable Company, 427 F. 2d. 466 (C.A. 5, 1970) and N. L. R. B. v. General Stencils, Inc., supra, (C.A. 2).

31/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent Monroe Tube Company, Inc., and its officers, agents, successors, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union sentiments or union activities.

(b) Soliciting employees to withdraw their union designation cards and from assisting them in withdrawing their cards.

(c) Threatening to close the plant if employees vote for a union in a representation election.

(d) By any means or in any manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Recognize, and upon, request, bargain collectively with Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, as the exclusive collective-bargaining representative of a unit consisting of all full-time and regular part-time production and maintenance employees of the Respondent employed at its Monroe, New York, plant, exclusive of office clerical employees, foremen, professional employees, guards, watchmen and supervisors as defined in the Act.

(b) Post at its Monroe, New York, plant, copies of the notice attached hereto and marked "Appendix B." 32/ Copies of Appendix B, to be furnished by the Regional Director for Region 2 and duly signed by a representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and shall be maintained by it for a period of sixty consecutive days thereafter, in

32/ In the event that the Board's Order is enforced by a Judgment of a Unites States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 2, in writing, within twenty days from the receipt of this decision what steps it has taken to comply herewith.

It is further ordered that the election conducted in Case No. 2-RC-16, 262 be, and it hereby is, set aside; that said proceeding be, and it hereby is, vacated and that the petition therein be, and it hereby is, dismissed.

Dated at Washington, D. C., May 16, 1974

/s/ Walter H. Maloney, Jr.
Walter H. Maloney, Jr.
Administrative Law Judge

APPENDIX B

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

Monroe Tube Company, Inc., is posting this notice to comply with the provisions of a recommended order issued by an Administrative Law Judge. The recommended order was issued after a hearing in which we were found to have violated certain provisions of the National Labor Relations Act.

WE WILL NOT interrogate employees concerning their union sentiments or union activities.

WE WILL NOT solicit employees to withdraw their union designation cards and WE WILL NOT assist them in withdrawing their cards.

WE WILL NOT threaten to close the plant if the employees in this plant vote for a union in a representative election.

WE WILL NOT, by any means or in any manner, interfere with, restrain, or coerce any employees in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL, upon request, bargain collectively with LOCAL 445, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as the exclusive representative of employees in a unit composed of all full-time and regular part-time production and maintenance employees employed at the Monroe, New York, plant, exclusive of office clerical employees, foremen, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

MONROE TUBE COMPANY, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an Official Notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor Federal Building, 26 Federal Plaza, New York, N. Y. 10007 (Tel. N. 212-264-0300).

APPENDIX A

ORDER

The transcript herein is hereby corrected as follows:

1. On page 13, line 13 and 14, change "part of the" to "Plywood"
2. On page 16, line 7, change "blank" to "plant"
3. On page 114, line 20, change "I think" to "I don't think"
4. On page 172, line 16, change "Golden State Bottling Company" to "Savair"
5. On page 245, line 12, change "7th" to "11th"
6. Wherever it appears, change "Mac Norton" to "Mac Naughton"
7. On page 286, line 24, change "materiality" to "responsibility"
8. Wherever it appears, change "perry Novak" to "Terry Novak"
9. On page 433, line 19, delete "not"
10. Wherever it appears, change "Pirovaroff" to Pirvaroff"
11. Wherever it appears, change "Gromer" to "Romer"
12. On page 576, line 7, change "car" to "card"
13. On page 580, line 1, change "bench" to "bunch"
14. On page 590, line 9, change "803" to "8(a)(3)"
15. Wherever they appear, change "Cadero" to "Cardero"; "Schrool" to "Schoorl"; "Chimas" to "Klimas"; and "Cargan" to "Carrigan"
16. On page 599, line 25, change "appeal" to "poll"
17. On page 602, line 25, change "top" to "type"

Walter H. Maloney, Jr.
Administrative Law Judge

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

MONROE TUBE COMPANY, INC.

and

LOCAL 445, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Cases 2-CA-13128 and 2-RC-16262

PROPOSED DECISION, ORDER AND DIRECTION OF SECOND ELECTION

On May 16, 1974, Administrative Law Judge Walter H. Maloney, Jr., issued his decision in this proceeding. 1/ Thereafter, the Respondent filed exceptions in a supporting brief, and the General Counsel filed a brief.

On December 10, 1974, the National Labor Relations Board issued an order in this proceeding in which it directed that a hearing de novo be held on the merits of this complaint before a different Administrative Law Judge.

Thereafter, the Respondent filed a motion to stay the Board's Order and a motion to quash the complaint. The General Counsel filed a motion in opposition to Respondent's motion to quash the complaint and a motion for reconsideration. The General Counsel joined the Respondent in requesting a stay of the Board's Order. The Charging Party filed a letter in which it joined the motions of the General Counsel. Finally, the Respondent filed a motion in opposition to General Counsel's motion for reconsideration.

Respondent's position is that the Board should quash the complaint and dismiss the charge. The General Counsel and Charging Party request that the Board reconsider the case and adopt the Decision and recommended Order of

1/ Complaint issued on December 19, 1973, based on a charge filed by the Union on October 23, 1973. On August 16, 1973, the Union filed a petition seeking re-election at Respondent's facility. Thereafter, the Union withdrew that petition on September 5, 1973, and filed a petition in Case 2--RC--16262 on September 6, 1973.

Administrative Law Judge Maloney.

Having duly considered all the motions before it and the positions of all the parties, the Board grants the motions to stay its Order of December 10, 1974. The Board notes that all parties, despite their obvious differences as to what the resolution of this case should be, appear to agree that a hearing de novo should not be held. Accordingly, to the extent that its Order of December 10, 1974, directs that a hearing de novo be held, the Board vacates the Order.

In light of both the Board's previous rejection of the Administrative Law Jedge's credibility resolutions and the positions of the parties as stated to the Board, we must decide how best now to resolve this case in a manner fair and equitable to all the litigants. 2/ Having addressed ourselves to this issue, we find that this case will best be resolved and the purposes of the National Labor Relations Act, as amended, best effectuated by the Board's reviewing this entire proceeding and, based on weight of the evidence in the record before us, rendering an appropriate decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board, having considered the briefs and exceptions, and the entire record in this case, makes the following findings:

Findings of Fact

I. The Business of Respondent

The complaint alleges, the answer admits, and we find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2/ No party to this case has made a claim that the hearing itself was conducted in other than a judicious manner. Since each party had full opportunity to present its case and make its arguments, we conclude that we can make a proper decision in this case based on the record before us.

II. The Labor Organiaztion Involved

The complaint alleges, the answer admits, and we find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. Background

Respondent operates a small factory which has about 50 employees and is engaged in the manufacture of metal tubing. In early August 1973, the Union began an organizing drive at Respondent's facility. On August 16, 1973, the Union filed a representation petition. On September 5, 1973, the Union withdrew that petition, and filed a new petition on September 6, 1973.

Case 2--RC--16262: Pursuant to a Stipulation for Certification Upon Consent Election, 3/ an election was held on October 12, 1973, at Respondent's facility, and the tally of ballots showed 15 for, and 22 against, Petitioner, with 7 challenged ballots. The complaint alleged that Respondent violated Section 8(a)(1) in that it (1) in late August 1973, through its supervisors, Verbert and Romer, encouraged and assisted employees to withdraw authorization cards; (2) in late August 1973, through its supervisors, Verbert and Romer, interrogated employees concerning their union activities and sentiments; (3) in early October 1973, through President Grout and Supervisor Hegedus, threatened to close the plant if the Union won the election. General Counsel also alleged that the Union represented a majority of the employees in the appropriate unit on all material dates and requested that a bargaining order issue as part of the remedy.

Since some of the allegations involve alleged misconduct by Verbert, we must first examine General Counsel's contention, opposed by Respondent, that Verbert is a supervisor within the meaning of the Act. It is not disputed that Grout, Romer, and Hegedus are supervisors within the meaning of the Act.

3/ The stipulated unit was described as follows: All full-time and regular part-time production and maintenance employees of the Employer at its plant at Rt. 208, Monroe, New York, excluding office clerical employees, foremen, professional employees, guards, watchmen, and supervisors as defined in the Act.

B. The Supervisory Status of Verbert

Plant Superintendent Monks testified that Verbert, as "night foreman," is "responsible for 8 people" (i.e., the night shift). Frequently during the night shift, no one higher in rank than Verbert is present. Verbert allocates work to employees and, according to Monks' estimates, spends no more than 50 percent of his time doing the physical work that the other employees do. As to the employees' work, Verbert is to "keep a check on it," and he can move people from one job to another if necessary. Verbert is salaired (earning 30 percent more than other night-shift employees), but the 8 other night shift employees are hourly. Various night-shift employees, including Nowak and Willard, testified that Verbert was their supervisor. Based on the above, we find that Verbert is a supervisor within the meaning of the Act.

C. Encouraging and Assisting Employees to Withdraw Authorization Cards

Employee Nowak testified that Verbert asked him to sign a form in which he would request the Union to return his authorization card. Nowak testified that Verbert "made it clear he wanted me to sign." Nowak told Verbert that he wished to draft his own letter. Nowak eventually did sign the form presented him by Verbert, but he asked Verbert not to turn it in to the office. Later, however, Plant Manager Romer came back to Nowak with the form and asked Nowak to fill in the Company's name. Nowak told Romer that he wished to draft his own letter, and he refused to fill in the form with the Company's name. Nowak testified that Romer became flustered and then left. Nowak never sent a letter requesting the return of his authorization card.

Employee Willard testified Verbert "was trying to get me to get it (the authorization card) back...." At Verbert's request, Willard signed the form letter requesting the return of his card. Willard testified that Verbert had asked him a couple of times to sign the form letter.

Employee Rosenstock testified that Verbert asked him if he wanted to get his card back and told him that he would give him the Union's address. Rosenstock wrote his own letter, gave it to Verbert, and later received a copy from the Respondent.

Employee Sinsabaugh testified that Romer gave him the address of the Union so he could request the return of his card. Also, Romer gave Sinsabaugh a batch of slips with the Union's address and told him to give the slips to anyone interested in getting his card back.

The testimony of the various employees is uncontradicted. Respondent called neither Verbert nor Romer to testify, and the failure of Respondent to call them gives rise to a presumption that their testimony would have been unfavorable to Respondent. Accordingly, we find that Respondent did encourage and assist employees to withdraw authorization cards in violation of Section 8(a)(1) of the Act.

D. Interrogating Employees Concerning Their Union Activities and Union Sentiments

Employee Willard testified that Verbert, in addition to urging him to seek the return of his authorization card, questioned him as to what other employees had signed cards.

Employee Rosenstock testified that Verbert asked him whether or not he signed an authorization card.

The above testimony is uncontradicted, as Respondent called neither Verbert nor Romer to testify as to this issue. We conclude that Respondent, in violation of Section 8(a)(1), interrogated employees concerning their union activities and union sentiments.

E. Alleged Threats to Close the Plant

The issue here is whether or not Respondent's president, Grout, or Respondent's production engineer, Hegedus, made threats to close the plant if the Union won the election. Three incidents are discussed below:

1. Grout's speech to day-shift employees
2. Grout's speech to night-shift employees
3. Hegedus' conversation with two other employees

The election was held on October 12, 1973. Grout spoke to massed assemblies of employees on October 10, 1973 (the night shift), and October 11, 1973 (the day shift).

At both meetings, Monks first explained voting procedures to employees and then Grout addressed them. Grout did not speak from a prepared text but did glance at notes he had prepared.

Grout admittedly was making his final pitch to encourage his employees to reject the Union. He told them that it was quite difficult for Respondent to compete with other companies, that Respondent had extra costs, primarily freight and transportation costs, which were a result of its geographical location. Grout further explained that 2 years earlier he had negotiated about selling Monroe Tube but had eventually rejected the offer and decided to keep the Company in Monroe.

He told the employees that it would cost them about $600 in union dues over a 3-year contract period, and that having a union did not guarantee them a union pension plan, a union medical plan, or increased wages.

While Grout admittedly discussed the above-mentioned topics, there is dispute over whether or not, near the end of the speech, he threatened to close the plant if the Union won the election.

1. The day-shift speech

Employee Cochran testified that Grout told employees that he had several offers bo buy the Company and move it out of the area. According to Cochran, Grout stated that he wanted to keep the Company in Monroe but, "however, I leave it to your imagination what would happen if the Union was voted in."

Employee Cordero testified that Grout told employees he could have sold the plant to businessmen who would have moved the Company elsewhere. Grout mentioned Monroe Tube's lack of modern equipment and high transportation costs and told employees, "I can sell this place come Monday morning." Cordero also testified that, either during a speech or in company literature, Grout "said he will bargain fairly, something like that." Cordero testified that he did not recall Grout saying "anything about imagination."

Employee Olin testified that Grout told employees he could have sold the plant 2 years ago. Olin testified that Grout told employees that "no matter which way the union goes, come Monday morning if he wants he could put a lock on the door."

Employee Hotaling testified that Grout said something about the sale of the Company and his high transportation costs. Hotaling testified that Grout said he wanted to keep the plant in Monroe but that he could do as he chose to do. After the speech, Hotaling sought out Grout and asked him if his speech meant he would close the plant if the Union won the election. Grout told Hotaling, "no, that's not what I mean at all."

Employees Lyons, Ulatoski, and Wagner testified that they did not remember Grout saying anything about closing the doors of the plant or anything about "imagination." However, these three witnesses all indicated that they did not have a clear memory of Grout's speech.

Grout admitted discussing a past offer to buy the Company, high transportation costs, and the cost of union dues. Grout denied making any threat to close the plant and denied saying anything about leaving it to employees' imagination what might happen. Grout testified that he emphasized to employees that despite his opposition to the Union he would bargain in good faith if the employees chose the union.

2. The night-shift speech

Employee Mendoza testified that Grout told employees that he had high transportation costs and found it difficult to compete with companies located in the Midwest. Mendoza testified that Grout stated that he would like to keep the Company in Monroe but if the Union came in he would have "to close the doors."

Employee Nowak testified that Grout told employees that his transportation costs were high and that he had had offers to buy the Company. In response to a question about what, if anything, Grout said might happen to the Company after the election, Nowak answered, "only the fact that it might be moved."

Employee Willard testified that Grout said something about selling the plant but also said that he wanted to keep it in Monroe. Willard testified that he did not remember Grout saying he would close the doors if the Union came in. Employee Rosenstock testified that Grout discussed his high transportation costs and how Midwest companies did not have the same costs. Rosenstock testified that Grout told employees that he had opportunities to sell the Company but he did not want to sell. Rosenstock testified that Grout did not say he would close

the doors if the Union got in.

Grout testified his speeches to the night shift and the day shift were about the same. He denied making any threats to lock the doors or close the plant. Grout testified he told night-shift employees he would bargain in good faith if the Union won.

3. Hegedus' conversation

Employee Mendoza testified that Hegedus had always been a friendly person and that they (Mendoza and Vittum) were kidding him that the Union would win the election. Then, according to Mendoza, Hegedus said, "I got to tell you if the Union wins those doors will be closed the next day. So, you will win the fight but lose the battle."

Employee Vittum testified that he and Mendoza were kidding Hegedus about the Union winning the election. Hegedus replied that the Company could not afford raises for the whole plant. Hegedus said the Company "can't afford the Union coming in so it would have to shut the doors if the Union did get in."

Production Engineer Hegedus denied telling Mendoza andVittum that the plant would close if the Union won the election. Hegedus testified that he told the employees that any wage increases were "really up to the negotiations." Hegedus told the employees, "I know the Company wouldn't be able to pay." Hegedus testified that he told them that the $5-an-hour rate being discussed by the employees was "out of the question."

IV. Conclusions as to Alleged Threats to Close the Plant

We are confronted with the difficult problem of weighing and assessing the evidence without the benefit of having observed the demeanor of the witnesses. Having carefully examined the record before us, we conclude that General Counsel has not proved by a preponderance of the relevant evidence that Respondent threatened to close the plant. As there is sharp conflict in the testimony of the various witnesses and as the testimony of General Counsel's witnesses does contain certain inconsistencies, we are forced, on the basis of the record, to conclude that the weight of the evidence does not preponderate in favor of finding that Respondent threatened to close the plant. Accordingly, we shall dismiss the allegations of the complaint alleging that Respondent, through either Grout or

Hegedus, threatened to close the plant if the Union won the election. 4/

V. The Representation Case

The following objection filed by the Union was consolidated for hearing with the complaint case:

> The Employer interfered, restrained and coerced the employees in their rights by threats to employees including but not limited to threats to close the plant made in speeches and literature.

Having found herein that Respondent did not threaten to close the plant, we overrule this objection. However, the question remains as to whether the election should be set aside on the basis of the 8(a)(1) violations that we have found herein. In accordance with Dawson Metal Products, Inc., 183 NLRB 191 (1970), we find that matters litigated in a complaint case which is consolidated with a representation case can form a basis for setting aside the election even though those matters were not raised by the objections. 5/ Here, the conduct found violative of Section 8(a)(1), including assisting and encouraging withdrawal of authorization cards, and interrogations as to union activities and sentiments, in conduct which interferes with the exercise of a free and untrammeled choice in an election.

Further, although the Board normally looks to the date of the filing of the petition resulting in the election to determine the beginning of the critical period, we find that the critical period in this case began on August 16, 1973, and extended until the election date of October 12, 1973. The Union filed its first petition on August 16, 1973, but later withdrew that petition on September 5, 1973, and refiled a second petition on September 6, 1973. Although the exact dates of the 8(a)(1) misconduct found herein were not pinpointed, it is clear that the unlawful conduct took place within a week or two after August 16, 1973. In cases like R. Dakin & Company, 191 NLRB 343 (1971), the Board has refused to evaluate

4/ Inasmuch as we have dismissed the allegations of the complaint regarding plant closure, we need not consider the Union's majority status. While the 8(a)(1) violations found herein are serious, we conclude that, assuming the Union's majority status, the violations are not sufficiently pervasive to require the issuance of a bargaining order as part of the remedy.

5/ Member Penello, while agreeing that the 8(a)(1) violations found herein would require setting aside the election had such matters been alleged in the objections, would not set aside the election based on matters outside the scope of the objections.

conduct that occurred prior to the filing of the petition which resulted in the election. However, in that case, it is significant that no petition was on file at the time when the alleged misconduct occurred. In this case, where the first petition was filed a short time prior to the filing of the second petition and a petition was on file at the time that unlawful conduct took place, we deem it proper to begin the critical period at the filing of the first petition and to evaluate conduct occurring from that date until the election. We find that Respondent's 8(a)(1) violations occurred during the critical period and were of a nature as to preclude the laboratory conditions needed for fair election. Accordingly, we shall set aside the election in Case 2--RC--16262, sever that representation proceeding, and remand it to the Regional Director for appropriate action.

The Remedy

Having found that Respondent has engaged in unfair lab or practices, we shall order it to cease and desist therefrom and take certain affirmative action that we find necessary to effectuate the policies of the Act.

Conclusions of Law

1. Respondent is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By encouraging and assisting employees to withdraw their union authoriz ation cards and by interrogating employees concerning their union activities and union sentiments, the Respondent herein violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER 6/

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Monroe Tube Company, Inc., Monroe, New York, its officers, agents, successors, and and assigns, shall:

1. Cease and desist from:

(a) Encouraging and assisting employees to withdraw their union authorization cards and interrogating employees concerning their union sentiments or union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its Monroe, New York, facility copies of the attached notice marked "Appendix." 7/ Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt therof, and be maintained by it

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6/ Any party may, within 20 days from the date hereof, file with the Board in Washington, D. C., eight copies of a statement setting forth exceptions to this Proposed Decision, Order, and Direction of Second Election, together with seven copies of a brief in support of said exceptions and, immediately upon such filing, serve copies thereof on each of the other parties.

In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

7/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the Board's Order of December 10, 1974, be, and it hereby is, vacated to the extent that it directed a hearing de novo be held.

IT IS FURTHER ORDERED that the election conducted in Case 2--RC--16262 on October 12, 1973, be, and it hereby is, set aside, and that said case be, and it hereby is, remanded to the Regional Director for Region 2 to conduct a new election when he deems the circumstances permit a free choice of a bargaining representative.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be conducted among the employees in the unit found appropriate, at such time as the Regional Director deems appropriate. The Regional Director for Region 2 shall direct and supervise the election, subject to the National Labor Relations Board Rules and Regulations, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of issuance of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike

which commenced more than 12 months before the election date and who have been permanently replaced. 8/ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Dated, Washington, D. C. September 15, 1975.

John H. Fanning, Member

Howard Jenkins, Jr., Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

8/ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT interrogate employees concerning their union sentiments or union activities.

WE WILL NOT solicit employees to withdraw their union authorization cards and WE WILL NOT assist them in withdrawing their authorization cards.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

MONROE TUBE COMPANY, INC.
(Employer)

Dated_____ By_____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor, Federal Building, 26 Federal Plaza, New York, New York 10007, Telephone 212--264--0300.

* * * * *

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MONROE TUBE COMPANY, INC.

and

LOCAL 445, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Cases 2--CA--13128
and 2--RC--16262

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On September 15, 1975, the National Labor Relations Board issued a Proposed Decision, Order, and Direction of Second Election 1/ in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Proposed Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, 2/ and conclusions of its Proposed Decision and to adopt its recommended Order.

1/ 220 NLRB No. 48.

2/ Respondent excepts to the inclusion of the 8(a)(1) misconduct engaged in by Supervisor Verbert in a conversation with employee Nowak as grounds for setting aside the election. We agree with Respondent's contention that this conversation apparently took place prior to the beginning of the critical period and is therefore not a proper basis upon which the election may be set aside. However, we find that the other 8(a)(1) misconduct found herein did occur within the critical period and is conduct of a nature as would interfere with a free and untrammeled choice in an election. Accordingly, we shall direct that a second election be held.

Member Penello, as stated in the Proposed Decision, would not set aside the election based on matters outside of the scope of the objections.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Order in its Proposed Decision, Order, and Direction of Second Election and hereby orders that the Respondent, Monroe Tube Company, Inc., Monroe, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said Order.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be conducted among the employees in the unit found appropriate, at such time as the Regional Director deems appropriate. The Regional Director for Region 2 shall direct and supervise the election, subject to the National Labor Relations Board Rules and Regulations, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of issuance of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. 3/

3/ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N. L. R. B. v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days after the date of issuance of the Notice of Second Election by the

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Dated, Washington, D. C. December 1, 1975

John H. Fanning, Member

Howard Jenkins, Jr., Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

3/ (continued) Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MONROE TUBE COMPANY, INC.

and

Cases 2--CA--13128
and 2--RC--16262

LOCAL 445, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

ORDER

On May 16, 1974, Administrative Law Judge Walter H. Maloney, Jr., issued his Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief.

The Board has considered the record and the Administrative Law Judge's Decision in light of the exceptions and briefs and has decided to order a new hearing herein.

The Administrative Law Judge's Decision is sufficiently replete with perjorative comments respecting Respondent and its officers and agents that we are left in doubt as to whether his judiciousness may have been prejudicially impaired by an emotional approach to this particular proceeding. The testimony herein was in rather sharp conflict, and we are thus required, as we frequently are in such cases, to make factual findings on the basis of credibility resolutions made by the trier of fact who saw and heard the witnesses and is normally best able to determine whose testimony is to be believed, in whole or in part.

Because there is reason to question whether the less than completely judicious approach to the case at bar articulated by the Administrative Law Judge may have colored his credibility judgments, the Board is unwilling to rely upon them in making factual findings herein.

The Board is therefore of the opinion that it will best effectuate the policies of the National Labor Relations Act, as amended, by remanding the case and holding a hearing de novo on themerits of the complaint before a different Administrative Law Judge. The Board recognizes the inconvenience and expense this disposition imposes on all parties, but can discern no other course of action which

will enable us to render an informed and judicious decision in this matter. Accordingly,

IT IS HEREBY ORDERED that a hearing de novo be held before a different Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose of receiving evidence on the issues raised by the allegations of the complaint.

IT IS FURTHER ORDERED that the above-entitled proceeding be, and it hereby is, remanded to the Regional Director for Region 2 for the purpose of arranging such hearing, and that the said Regional Director be, and he hereby is, authorized to issue such notice thereof.

IT IS FURTHER ORDERED that, upon the conclusion of the hearing, the Administrative Law Judge shall prepare and serve on the parties a Decision containing findings of fact, conclusions of law, and recommendations based upon the evidence received and that, following service of such Decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.

Dated, Washington, D. C., December 10, 1974.

By unanimous direction of the full Board:

John C. Truesdale

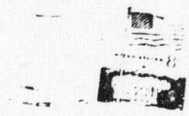
Executive Secretary

BEST COPY AVAILABLE

* * * *

GENERAL COUNSEL'S EXHIBIT NO. 8

Charles Rosenstock
c/o Monroe Tube Co.
Monroe, N.J. 10950



International Brotherhood of Teamsters
Local 445
Box 2047
Newburgh - New York 12550

RECEIVED
SEP 7 1973

Fro. : Monroe Tube Co.
Monroe, Nrs.

8-25-73

To:
International Brotherhood of
Teamsters : Local 445
2 Post st.
Yonkers, N.y.

Dear Sirs.

I wish to have the card that I signed back. I feel that I have made a mistake when I signed this card and being that I did not realized that by sign this I have, I feel that it is not necessary to belong to any union.

I wish to apologize for your inconvience.

Thank You

Charles Rosenstock

NATIONAL LABOR RELATIONS BOARD
Docket No. _____ OFFICIAL EXHIBIT NO. GC 8
Disposition: Identified _____ Received _____ Rejected _____
In the matter of _____ Reporter _____
Date 11/26/74
By direction

GC 8

GENERAL COUNSEL'S EXHIBIT NO. 9

QUICKI-NOTE 9/5/73

TO: Mr. Art Herman NLRB

SUBJECT:
RC Petition
Monroe Tube Company

Per our conversation this date, enclosed is re-filed petition in subject case. Please apply authorization cards you have on hand in the RC Petition withdrawn in this matter today.

/s/ Ray Ebert
Local 445, IBT

GENERAL COUNSEL'S EXHIBIT NO. C.P.2

"A N N O U N C E M E N T"

ANOTHER

COMPANY CONTEST

1st Prize - $50 SAVINGS BOND
2nd Prize - $25 SAVINGS BOND

GUESS THE "HIGHEST FINE"EVER LEVIED AGAINST A UNION MEMBER BY THE TEAMSTERS

* Same contest rules as before
* The employee who comes the closest to the exact amount wins a $50. Bond!
* The employee who comes the second closest wins a $25. Bond!
* Put your guess as to the "Highest Teamster Fine" on the left portion of the attached entry form and drop it into our Company Suggestion Box
* Keep the right portion of your entry form
* Do not sign your name
* Get your entry in by midnight tonight, Wednesday, October 10th
* Winners will be announced prior to the election on Friday!
* This contest should be easier than guessing the Longest Teamster strike; don't worry about some people getting "inside information" from the union on this one either. Just pick a nice big number - you might win!!!
* Good Luck Again!!!

RESPONDENT'S EXHIBIT NO. 3

Norman Sinsabaugh
111 North Main St.
Monroe, N.Y. 10950

August 16, 1973

Gentleman,

In referance to the Union-Card I signed, would you please send it back to me, as I am no ~~longer~~ Interested in joining any union,

Sincerly Yours.

Norman Sinsabaugh

Norman Sinsabaugh
111 North Main St. PM
Monroe, N.Y. 10950

POST SERVICE, NY 109
16 AUG 1973

8¢

Rise of the Spirit of Independence

International Brotherhood of Teamsters, Local 445
2 Port Street
Yonkers, New York 10705

Mr. Schueler?

* * * * *

RESPONDENT'S EXHIBIT NO. 6

August 10, 1973

Information has come to my attention that cards have been and are being circulated indicating union interest. These signature cards could have very important and serious legal consequences for you, your families and the Company.

You may have heard one rather exagerated side of the story, but you have not heard the Company's views concerning union representation of our employees.

I strongly urge you not to sign any of these cards until another meeting or communication can be arranged within the next few days, at which time we will make our views known to you - and we will be prepared to discuss this matter with you in further detail.

RESPONDENT'S EXHIBIT NO. 7

August 15, 1973
Time: 2:40 P.M. and 5:00 P.M.

Last Friday afternoon I promised you all that another meeting would be scheduled in a few days time for purposes of further discussing the matter relative to the interest of a few of you in possible union representation; as promised, that is the purpose of this meeting today.

I might also state that this particular matter is requiring a considerable amount of time on the part of this Company's management, time that could much better be spent toward earning more profits, for wages and benefits. In addition to management time it is costing this Company rather substantial amounts of money for legal counsel, in an effort to assure that our employees receive proper, correct and accurate information regarding the consequences of this issue. I am willing to spend this time and money to make sure that you have all the facts however, so let's get into the matter at hand.

It is no secret that a few people have been trying to sell our employees on the idea of having a union. Having a union in this plant is a very serious consideration that should not be made without knowing all the facts. The reason that I am having this little meeting with you today is to give you some information about these union cards and the way these cards could give the Teamsters control over you and your job.

A person who asks you to sign a Teamster card will tell you anything to get you to sign. He will make exaggerated promises about what he can get for you if you sign the card, but he will not tell you that he cannot guarantee any of his promises. He will not tell you that even if a union was here, Monroe Tube Company is still the one that pays your pay check and provides your fringe benefits - and not the Teamsters. He will not tell you that all a union can do for you is speak on your behalf.

To sign a card is not to sign for higher wages or better working conditions - rather, to sign a card is to bind yourself to the control of the union's constitution. He will not tell you these things.

Many of you may not be familiar with what it really means to sign a Teamster Authorization Card. I've heard many stories about employees being fooled into signing Teamster cards and I believe it's my obligation to speak to you about the facts of signing a card. I want to make it very clear right in the beginning of this meeting that what I want to do today is to give you some facts that I think are important to you and your families and that I think you should have. I'm not here to sell you on anything. Your decision is your business. The policy of this Company has always been to deal honestly and fairly with each of our employees. We don't want to see you fooled and we don't want to see you make mistakes. That is why we are dealing above board and giving you the straight facts.

Unions have tried to get people to sign cards by saying:

"It doesn't mean anything"
"It is only to get more information"
"A majority have already signed"
"You can make your mind up later"
"You can get the card back if you change your mind"
"Go ahead - we have 75% signed"
"We only need 4 more and you are one of them"

Or, they may try to embarras s you into signing, or hard sell you into signing, or tell you that you are the only one who has not signed.

Be careful: Think long and hard if you are asked to sign. Read the small print on the union card.

If you sign a Teamster Card you may be authorizing a union to be your bargaining agent. You may be agreeing to bring a union into our Plant without having a chance to vote on it. I want to repeat this: If you sign a union card, you may be authorizing a union to be your bargaining agent. You may even be agreeing to bring a

a union into our Plant without having a chance to vote on it. Your vote is valuable. Don't give it away.

Unions do not always believe that you should have the right to express your choice in a secret ballot election. They frequently try to get into a plant like ours without an election based upon signed cards. The Teamsters can try to get recognition just on the basis of signed cards without an election.

How can this be done?

If the Company refuses to recognize them, the union may do one of several things. They may call an immediate strike for recognition. The Teamsters have called these kinds of strikes. Or the Teamsters may request a Labor Board Election; or the Teamsters may request a Labor Board to count the cards at a Public Hearing. You all know what a strike and an election are, but you may not know what a card count procedure is.

Under the card count procedure, the Teamsters give the cards to the Labor Board and accuse Monroe Tube Company of unfair labor practices. If the union files unfair labor charges, the Labor Board may then hold an open hearing. Employees who signed cards may be subpoenaed by the Labor Board or the Company to testify at the hearing. On the witness stand, employees will be shown their cards and asked to identify their signatures. A photostatic copy of the cards will be given to the Company's attorneys who may then cross examine the employees concerning the circumstances under which the card was signed.

As you can see, signing the card is a very serious matter and has many legal implications.

Please understand that you have the right to refuse to sign these cards. You don't have to sign a card just to get someone off your back. You don't need to talk to a union agent, and you don't even need to talk to an employee who might

be bothering you about the union. In fact if you feel that any employee or any union organizer is bothering you or pressuring you into signing a card against your wishes, I'll do what I can to see that this type of action stops immediately. You have every right to be free from that kind of pressure or harrassment. No one can force you to sign a union card and if anyone does, let me know and I will see that it stops, fast!

In the event that some of you may have already innocently signed these cards, realized your apparent mistake and have asked for the cards back but been refused by either your "friends" here in the Company or the Union, this should be an indication to you of the type organization that you are dealing with. Personally I have always felt that anyone is entitled to a mistake - as is evidenced by the fact that this Company itself has rehired a second time some of you sitting right here today. If you have been refused the return of your cards, our suggestion is to write a letter to Teamsters Local 445 in Yonkers, New York, and ask for your card back; keep a copy of your letter and if you need the use of copying equipment I will see that you get it.

Let me make something perfectly clear. Monroe Tube Company is not interested in having a union in this plant. We have been in business for 30 years, without a union. Our employees did not need a union to get the outstanding fringe benefit program which you all enjoy today. You have Medical Insurances, Life Insurances, good vacations, top holidays, profit sharing, sick leave, funeral leave, service awards, educational programs, attendance awards and others totaling more than $100,000. per year. Everything and more than is in most union contracts. On top of this you have regular yearly wage increases, Christmas Bonuses and Profit Sharing Bonuses. You won't find Christmas Bonuses and Profit Sharing Bonuses in a Teamster Contract.

A brief note on our 1973 Annual Clambake and Profit Sharing Plan meeting. Many have asked me why should I consider spending nearly $2,000. on a Clambake, or pay thousands of dollars into a Profit Sharing Plan that the Company

will never see again, or pay a full week's Profit Sharing Bonus to employees who have little or no regard for the future of this Company relative to the situation which we are discussing here today? What would you do if you were in my shoes? How would you feel about it? The reason that I fully intend to continue with these long established benefits is because I firmly believe the vast majority of all o f you here today really do appreciate what this Company has been and is doing for you, and I refuse to let my judgment or emotions be swayed by accusations, boasts, unfounded promises or verbal abuse from the very few whom need not be mentioned by name. We will have our Clambake this year and we will receive our Profit Sharing B onuses this year, the same as we have done for years. I have confidence in most everyone of you - Please have confidence in me!

All these fringe benefits and regular wage increases are the result of our strong feelings toward always trying to do the right and fair thing for the employees of Monroe Tube Company. I do not think you need a union. It is my strong belief that it is not in your interest or in the interest of the Company to have the Teamsters here in our Plant. There are many reasons why I do not believe it is in your best interest to get involved with this union or to sign any of their cards.

Why do I say this? I say this because signing a Teamster Authorization Card is like signing a blank check. It means giving your rights away to a union that really has no interest in you - except to get your hard earned cash. These cards authorize someone else to represent you in dealing with us. Frankly speaking, I don't think you would sign a blank check for anyone - and I don't think you would want to give away your rights to represent yourself or obligate yourself to the Teamsters or to the next group that may come down the road looking for your money. Why not speak for yourselves, like you have always done?

There is much to think about concerning one's obligations to the Teamsters, before signing an authorization card. These are also the reasons why I don't

think it is in your best interest to get involved with the union. For example"

1. How much money will it cost you in dues, assessments and other fees if this union gets in? Are you going to obligate yourself to pay $11, $12, or $13. a month plus special assessments and fees for your right to hold a job? Do you think you should pay $150. a year or more? This is what could happen if the union decides to cash in your card.
2. What would it mean to you and your family, if the Teamsters called a strike and your pay check stopped? Or if we replaced you with someone else during the strike? This is exactly what happened to some members of Teamster 445 who signed the Teamster's card about a year ago right here in our area. Did they tell you about this?
3. What union rules and regulations will you have to obey if the union gets in? Has the Teamsters given you a copy of their Constitution? Have you read the Constitution? Have you any idea what their rules require you to do? There are 180 pages in it and you have to obey everyone of them. Did they tell you that?
4. Will you have to pay a fine because you disagree with some rule in that Constitution or with some Teamster boss? Did they tell you that the Teamsters have fined some of their members $500.00 for not obeying union bosses?
5. Can the Teamsters deliver on any of their political type promises? Remember, they are only promises, not guarantees.
6. What do you know about the type of persons these union men are? Do you know anything about their members in other companies? Stop and think about this. What do you really know about these strangers as compared to what you know about us and our genuine interest in you? This company has proven itself!
7. Why are the Teamsters interested in you? What is in it for them? Have they told you that if they got in here they would collect over $20,000. from you in dues and fees during the life of a 3 year contract? These people

seek to stir up dissatisfaction and suspicion about your jobs, your benefits and your work at Monroe Tube Company. They will ignore and try to get you to forget how well Monroe Tube Company treats its employees, and how good conditions are right here compared to alot of other places, including places that have the Teamsters!

These union men would have you pay them dues and assessments and fees for what you now enjoy at Monroe Tube at no additional cost to you.

At Monroe Tube Company we have no strikes or threats of them; no compulsory dues payments; no obligation to picket here or at another company. No possibility of getting fined.

These strangers have no place to employ you. They give nothing. They can guarantee nothing and they try to take all. That is why they have sent their cards around here in the first place. That is why they may circulate the cards again, in the future. That is why I strongly feel that it is not in your best interest to sign up with this union. For if you do sign you undertake many unknown costly obligations which are contained in their by-laws, their Constitutions, written and unwritten laws.

Again, my only purpose in taking this time, which I mentioned to you earlier, was to give you some of the facts about signing union cards and what it could mean to you and your families. I am not trying to sell you on anything against your wishes; the decision is your business!

If you have any questions, I will be around the plant, and I will be happy to answer them for you on an individual basis. Please feel free to ask them of me or to bring your questions to your foreman. I think we have a good, solid, well established, respected Company here - Let's keep it that way! Thank you for your attention and now let's go back to work.

RESPONDENT'S EXHIBIT NO. 8

MONROE TUBE COMPANY, INC.

EMPLOYEE MEETING

October 11, 1973

2:40 P.M.

The primary purpose of this meeting is to provide all eligible voters with a Vote Demonstration, so they will be familiar with the procedures that will be used at the N. L. R. B. Election tomorrow afternoon.

Following the Vote Demonstration I will present you with a few of my final thoughts prior to the election to once again stress the importance of this issue to all of you, and finally we will announce the winners of our contests & make the awards previously indicated.

At this time I would like to turn the meeting over to Fred Monks who will handle the Vote Demonstration.

I would like to give you all my reasons why I think it is most important that everyone should vote, and secondly, why I think everyone should vote "NO". This will not be a high pressure lecture! Rather, it will be low key, reiterating what I have already told you about the issue and its importance. These are facts.....

Why should you vote? You will be provided with brochures and a final hand-out which will further explain the answer to this question. One of the main reasons however, is that a majority of those who actually vote will decide for the entire group; you owe it to yourself not to let someone else make your decision for you - remember, if only 5 people vote, 3 could decide for some 40 Odd! You have a right to vote; if you don't like some of the things that you have heard about unions, and if you agree with my line of reasoning - and I don't recall having let you down thus far - then again, my suggestion to you would be to vote "NO".

Why should you vote no? From your standpoint first, it is a simple case of dollars & cents; you already know about the high costs of union membership. These points have been previously discussed in some of my letters to you; over the course of a 3 year contract it could cost you as much as $600 of your pre-tax income for dues & initiation fee alone. What will this money buy you? No one knows for sure - there are no guarantees! You might get more, you might get the same, or, you might even wind up with less than you have right now! Look into the situation at Eastern Alloys, or closer to home, with one of our own customers - J. L. Fabricating. This was originally a non union company, union cards were circulated, the union won the election, a contract was finally negotiated after a lot of undue hardship, and only after the union got into the plant did the employees realize their mistake - it took them 3 years of contract before they were able to correct their mistake and vote the union out again; I'm sure some of those employees could provide you with some very interesting information in that regard! You don't have to make that mistake - vote "NO".

No union Means:

No initiation fee
No dues
No assessments
No fines - and you're going to hear about a real beauty when I announce the winners of our Highest Fine Contest.
No strikes - I'll tell you all about a real long strike too, when the winner of the Longest Strike Contest is announced. The union may have told you not to worry about a strike here, but remember - there are guarantees from the union - maybe a lot of promises?
No loss of wages
No loss of benefits
No loss of jobs - if you are replaced during a strike?
No guarantees - except one...and that is that a union will cost you money in dues.

A brief word about some rather misleading information that has reportedly been passed around the plant. If a union should get into this Company, there are no guarantees that you would wind up with a union medical program; it might be prohibitive for us from a cost standpoint! I don't think Eastern Alloys accepted the Teamster Medical Program; they went out on strike, some lost jobs, profit sharing, and on top of this those that were left did not get the union medical plan.

Personally, I think we have a pretty good medical program of our own right now, and you're not paying union dues to get it either! Neither are there any guarantees that we would have the Teamster Pension Plan, if a union got in; again, Eastern Alloys went out on strike, and they did not get the union pension plan afterall! As far as losing profit sharing is concerned, I don't recall anyone in this Company ever losing their profit sharing plan money - quite the contrary; ask some of our retired employees about their profit sharing income, which didn't cost them a dime! (Henry Coppola, John Dombroski, etc) Look at your profit sharing slips - that money is yours - and if you don't understand our program, ask me about it! There are no union guarantees on more sick leave benefits; I have a friend who is President of a steel company with a Teamsters union contract - that contract reads 5 days sick leave - exactly what you already have, and it's not costing you union dues money to get it either!

Another bit of information for you; there will be no reprisals, threats, sour grapes, revenge, etc from this Company toward any employee, whether or not they may have supported this union business. To the best of my knowledge, we have never fired anyone without good & just cause, and we're not about to begin the day after the election results indicate no union; this Company needs good people, and you all know it. Anyone can make a mistake; the important thing is that we learn from it - if someone supports the union and the union loses, that person will not get fired because he was for the union. When you go behind the voting booth, nobody will ever know how you voted - unless you tell them! Regardless of whatever promises you may have made to get someone off your back here in the plant, or out of your house at home, you still have your own conscience to live with - I think you know the right & best thing to do when you go into the booth - do it!

Some promises may have been made to you concerning automatic raises once the union gets in - don't you believe it! We have to agree first, and I will not agree to anything that I don't think this Company can afford. We will bargain in good faith, yes, however we have our limits too, like everyone else. Questions have been raised concerning frozen wages & benefits during contract negotiations; this may be something for you to think about. Contract talks could drag on for

quite awhile??? You people have always gotten your annual raises, and some more frequently; and, we're all human - if we really think the grass is greener on the other side, we are certainly free to go take a look. Some people have gone after those few cents per hour more, and some of those same people have come right back here after their old job too!

Those are some of the reasons why I think you should seriously consider voting "NO" from your own standpoint. Now, some reasons from the Company standpoint, which incidently I think I am more qualified to give you than anyone else since from where I sit, I can see the whole picture. First, I feel that I know better than any other person just what this Company can afford, and what it cannot afford, and frankly I don't think it can afford a union! I say this based on facts that I know to be true in other situations concerning union organized companies. Basic economics is the topic of discussion at this point - dollars & cents - profit & loss. Regardless of what you may think, or what youmay have been told, just because we happen to be rather generous to you with our profit sharing and other benefits, we unfortunately are not stocking up huge piles of money that we don't know what to do with! A bit of history; I did not start at the top of this Company, as some of you know. I started in the production areas, from the bottom, then into sales, then finally worked up to my present position. I know what it takes to make a dollar in this Company; I know what the costs are for wages, raw material, benefits, new equipment, etc. I also know how hard it is for us to get an order because a lot of our equipment is old, and we simply can't compete with other steel tube mills in the country that have the most modern up to date equipment - equipment that can cut 5 pieces of tubing at a time instead of one like we do - equipment that can draw 3 pieces of tubing at a time instead of one like we do. These mills are also located right in the middle of the raw material source area, as well as the market area; they do not have to pay $1,000 per truckload in freight charges alone to ship the raw material from the midwest to the east, and then from the east right back out to the midwest again. We have many inflated costs already that our com petition doesn't have. We may not be the most efficient mill in the country, no, but then again we're certainly more efficient than most unionized mills with job classification - do you really think we can afford that? I don't! Some people have asked

the way they are; we don't need any union in this Company. Put your X in the "NO" box on Friday!!!

The voter eligibility list will be posted tomorrow together with other information on voting procedures.

At this time I would like to announce the winners of our 2 contests, etc, etc.

me if I would sell the Company if a union came in - let me tell you a little story. A couple of years ago, another outfit wanted to buy Monroe Tube Company; this company was located in the midwest, and they wanted to do the same type of business that we were doing - but they thought it should be done in the midwest too. I thought, and I still think, that Monroe Tube Company belongs in Monroe, N.Y. - therefore, for many reasons we decided not to sell the Company. Guess what happened....this other company started their own brand new tube mill out there anyway, so now we have another competitor! For those who are interested, this Co. is bought and paid for; we do n ot have to worry about someone knocking on the door for an overdue mortgage payment, or our creditors forcing us out of business. This is a family Company, that my father-in-law started some 30 years ago; it means a lot to me and also to the family - we could have sold it before, but did not. This company is providing incomes for 60 odd local families, myself included, and I hope it can continue to do that. Again, it is a matter of economics however; we must invest our profits back into the Company for new equipment so that we can compete with the other mills who already have an advantage over us with their location. You can only cut a pie into so many pieces, then there isnone left; there is only so much money to go around. One employee surprised me this week with his understanding of the situation that I am trying to explain to you right now; he said, if the union really can do all that it has promised for him, just where does this leave the Company? How can the Company afford it, because if it can't, in the long run he may have no job left! Nothing to lose? I think you may be risking losing a lot; you all have a big decision to make tomorrow, but remember, in the final analysis the final decision is mine, because I own this Company. I think I know what it can afford, and everything & everyone has a limitation: we can only do so much. Remember, no union can guarantee your wages or your job, and no union can force me to agree to anything more than you already have right now, if I don't think our Company can afford to pay for it. We would have an obligation to negotiate in good faith, but you could wind up with less....like what happened in Maybrook. You know what you have now, and you know what it's costing you - nothing! Let's keep things

RESPONDENT'S EXHIBIT NO. 9

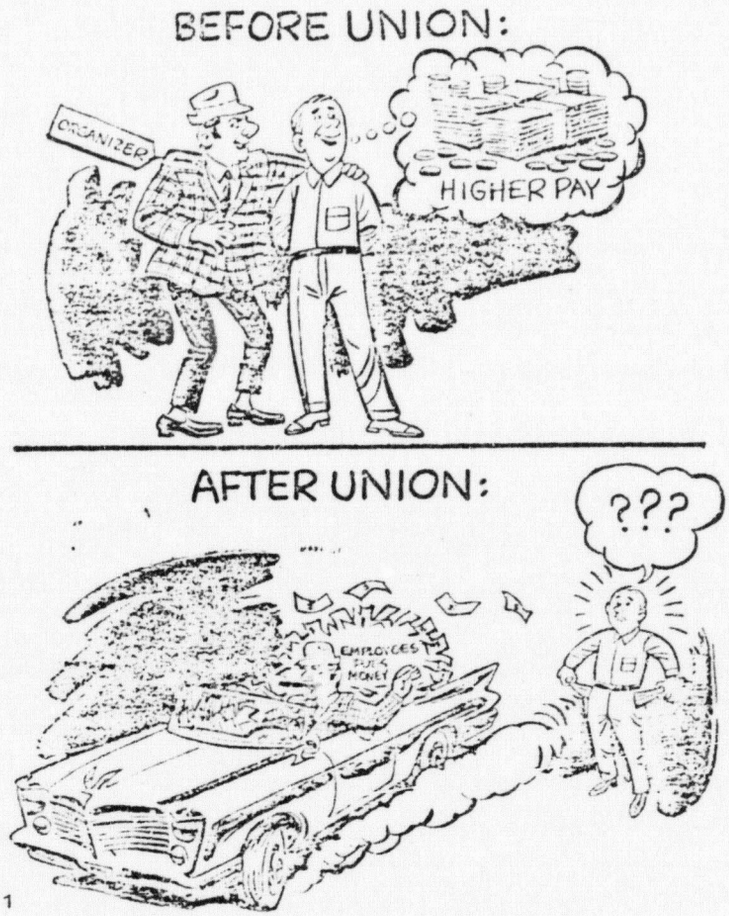
FACT AND FICTION

SOME QUESTIONS AND ANSWERS THAT SHOULD CONCERN

YOU

AS AN EMPLOYEE OF MONROE TUBE COMPANY BEFORE YOU VOTE

It is important that you have truthful answers to help you decide how to vote in the coming election. Read the facts in this booklet. It will help you to make the right decision and could keep you from making a serious mistake.



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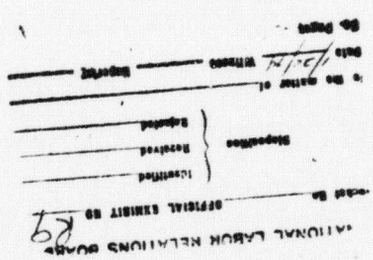
FACT AND FICTION

SOME QUESTIONS AND ANSWERS
THAT SHOULD CONCERN

YOU

AS AN EMPLOYEE OF MONROE TUBE COMPANY
BEFORE YOU VOTE



It is important that you have truthful answers to help you decide how to vote in the coming election. Read the facts in this booklet. It will help you to make the right decision and could keep you from making a serious mistake.

THE FOLLOWING ARE ANSWERS TO YOUR QUESTIONS ABOUT THE TEAMSTERS

1. Q. If I signed a union card, do I have to vote for the Union?

   A. No! In the voting booth, it does not matter whether you signed a card or even started to pay union dues in advance. Since the N.L.R.B. will conduct a private, secret ballot election, you are free to vote "NO" regardless of your past actions.

2. Q. If I am not interested in any union, should I stay away from voting?

   A. No! It is most important that everyone votes. The vote will not be decided by the number of voters who are eligible to vote. The majority of the actual votes cast will determine the outcome. We We have about 40 eligible voters. If only 5 vote, 3 votes could determine whether all employees will have the union.

3. Q. Can't I try the union for a year and then drop it?

   A. That's easier said than done. Once a union gets in, it's almost impossible to get rid of them. In the first place, you can't get rid of the union while a contract is in force--often two or three years. In addition, the union can fine and suspend employees or groups of employees who try to get rid of the union.

4. Q. I have been told that everyone else is joining the union! Why shouldn't I join.

   A. It is a common organizing device of unions to state that nearly everyone has joined up and they want only a few more votes to make it 100%. Actually, they may have very few people and they use a "don't be last" approach to get votes.
   As a matter fact, the Teamsters apparently failed to get a majority of the Monroe Tube employees to sign their union cards. As a matter of fact, in June of 1972 Eastern Alloys employees, after the strike at Eastern Alloys voted against Teamster Local 445 bya vote of 20 to 0. Every single employee cast their ballot against this Teamster Local.

5. Q. If the union becomes our representative and I decide not to pay my dues, can't I just cancel my membership?

   A. NO! A union member who does not pay his dues can be punished by the union. In some cases, for example where there is a union shop, the member could lose his job. You just continue to pay whether or not you want to be a member.

6. Q. If this union becomes our representative, can I lose my job because I didn't support it?

   A. NO! Employees are protected by law to either join or not to join a union. Threats cannot be made by the union or the company. Furthermore, Monroe Tube has an established personnel policy which guards against an arbitrary discharge.

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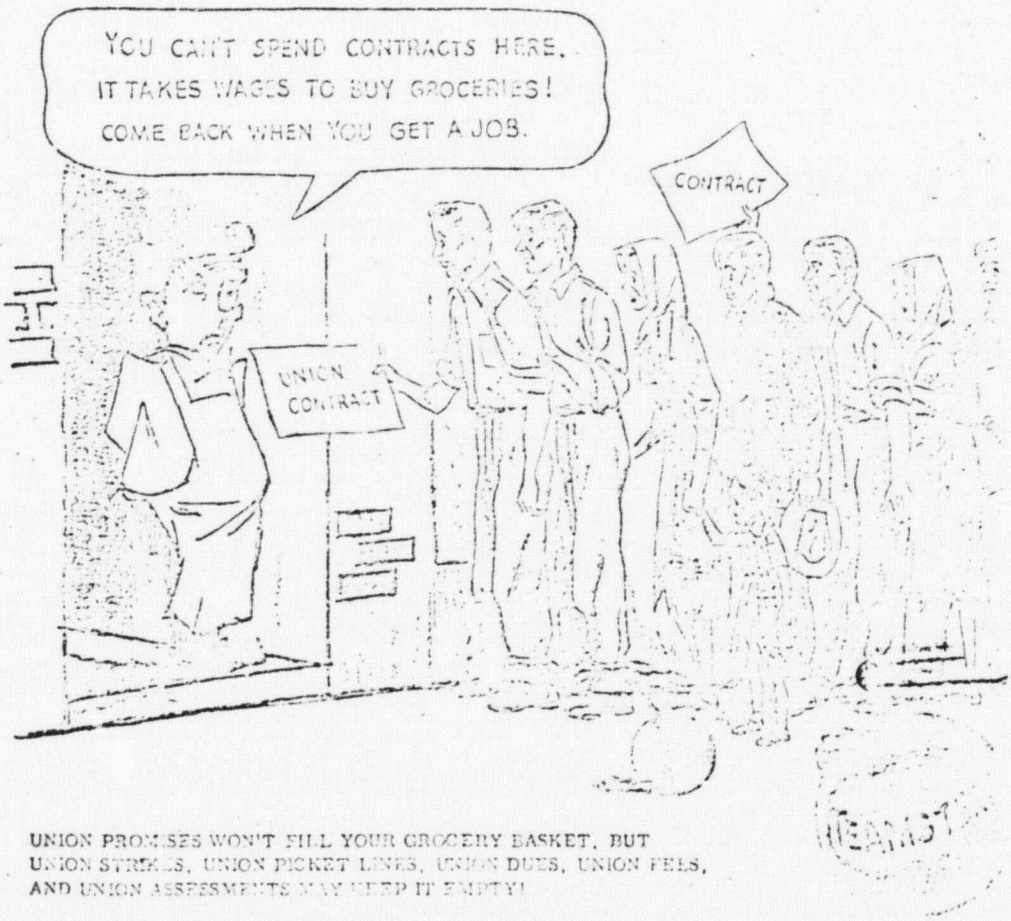


UNION PROMISES WON'T FILL YOUR GROCERY BASKET, BUT UNION STRIKES, UNION PICKET LINES, UNION DUES, UNION FEES, AND UNION ASSESSMENTS MAY KEEP IT EMPTY!

We are not saying a strike is inevitable, but only that Teamster Local 445 has a long history of pulling its members out on strike.

NEGOTIATIONS

1. Q. If the Teamsters becomes our representative won't the Company have to give more money?

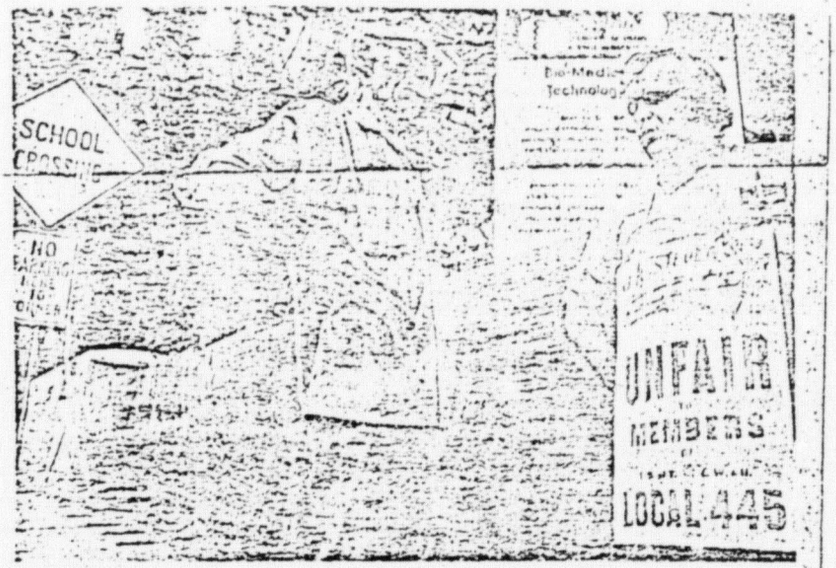
   A. NO! By law, Monroe Tube does not have to meet any union demand. The Company will live up to its obligations, which would be to bargain with the union. But what is given still depends upon what the Company can give, and what the Company thinks is in the best interest of Monroe and its employees. With or without a union, the Company will pay fair wages consistent with its ability to pay and with comparable wages in the community.

2. Q. If the union makes a demand for more money in place of certain benefits, of for job classification, does the Company have to agree to swap the benefits for the wages and agree to have job classifications?

   A. NO! The union cannot make the Company do anything. The Company must and will bargain in good faith, but the Company also has the final say as to whether it will or will not swap benefits for wages or can institute job classifications. If the Company cannot in good faith and on sound business judgment give what the union has asked, the union's choice is to drop its demand or to call a strike. It is our opinion that fringe benefits are necessary to attract new employees. Job classifications could have the result of making Monroe Tube less competitive.

3. Q. Don't negotiations start from a base of our present benefits and go up?

   A. All aspects of wages, hours and working conditions are open to negotiations. No one can predict the outcome. Some wages may increase, others can decrease. Some benefits may go down, others may go up. You could end up with the same wages and benefits, more wages and benefits, or even less wages and benefits.



Charles B. Maloney of Goshen, left, and Ray A. Aube of Walden man a picket line in front of an Orange County Community College's construction site Tuesday morning. Members of Teamster Local 445 claim non-union truckers enter the site on weekends.

— Record photo by Manny Fuchs

STRIKES

1. Q. If the Company and union cannot agree on a contract, what can the union do?

   A. It can call the employees out on strike to try to make the company cease operations. We are not saying this is inevitable but Teamster Local 445 has a history of pulling its members out on strike. Some of their strikes are union strikes and have not been to get the strikers more wages or benefits.

2. Q. If the union calls a strike, can I be replaced?

   A. Yes, under the law, the company is free to hire new employees to permanently replace economic strikers. If an employee's job is filled by a permanent replacement at the time the strike ends, he would not be entitled to return to work at the end of the strike.

3. Q. If the union calls us out on strike, will I receive pay from the company?

   A. Absolutely not. The minute you strike, your pay stops. The union won't pay your salary either.

4. Q. If the union calls me out on strike, will they pay me anything?

   A. You might be entitled to strike benefits, but these are far less than your salary, and are token payments. No strike benefits are payable the first week of the strike. No strike benefits are payable unless an employee is available to picket. The weekly benefits begin at $15.00, but may go as low as $10.00.

5. Q. Is it true that the company can stop making payment for fringe benefits such as hospitalization and life insurance during a strike?

   A. That is true. If you wanted these benefits to continue during the strike, you would have to arrange to make the payments for them yourself.

6. Q. If the union calls a strike and I want to continue working, can I be fined?

   A. The union can fine any member who attempts to cross the picket line to work. The Supreme Court has upheld the right of a union to assess fines in such circumstances.

7. Q. Could the company keep operating during a strike?

   A. Certainly and it would do so. The company will continue to supply its customers during a strike.

Respondent's Exhibit 9 (Continued)

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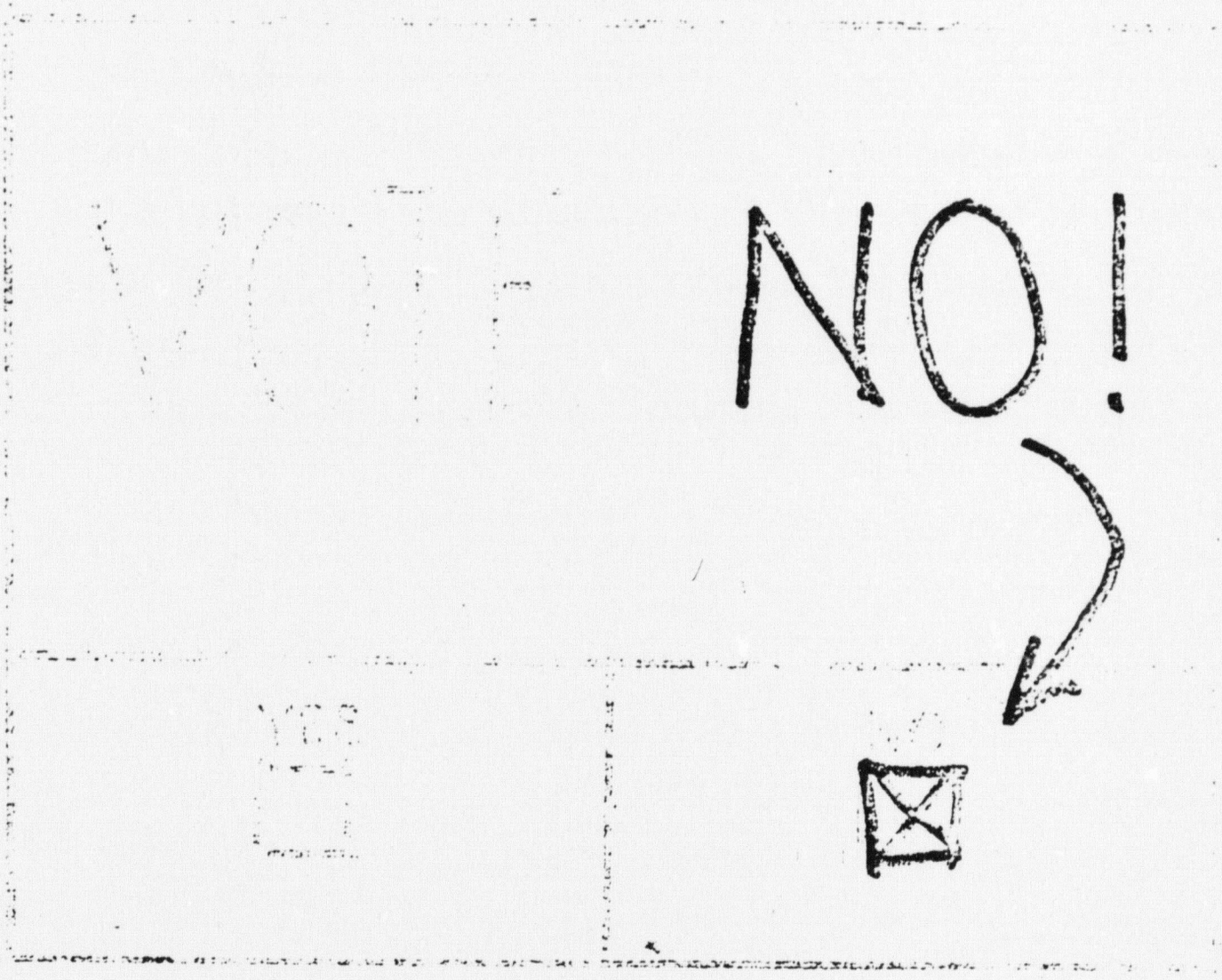

TRANSCRIPT OF PROCEEDINGS

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION

In the Matter of:	:	
MONROE TUBE COMPANY, INC.,	:	
Employer,	:	
and	:	Case No. 2-RC-16262
LOCAL 445, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,	:	2-CA-13128
Petitioner.	:	

Old County Court House
Main Street
Goshen, New York

Monday, January 21, 1974

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 o'clock a.m.,

BEFORE: WALTER F. MALONEY, JR.,

ADMINISTRATIVE LAW JUDGE

APPEARANCES:

FREDERICK L. SULLIVAN, ESQ. — MARSHALL & MARSHALL, ESQS. 135 State Street, Suite 200, Springfield, Mass. 01103 appearing on behalf of Monroe Tube Company, Inc.

DAVID KRAMER, ESQ. — FRIEDLANDER, GAINES, RUTTENBERG & GOETZ, ESQS., 1140 Avenue of the Americas New York, N. Y., appearing on behalf of Local 445

APPEARANCES (Continued):

RAYMOND P. GREEN, ESQ. — Counsel for the General Counsel, National Labor Relations Board, Region 2, 26 Federal Plaza, New York, New York

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10 MR. GREEN: Your Honor, I would like to put into evidence -- it really should be a matter of perhaps the formal papers, but not quite, the union had filed a petition in this matter originally on August 16, 1973. That is the date we received it.

11 This is the same petition that was withdrawn for, I guess, time reasons, and it was refiled the next day after it was withdrawn on September 6th. So, I think --

JUDGE MALONEY: You mean it was within the Deluxe Metal period?

MR. GREEN: No. There is no intervenor. This was just a petition that was filed. There was apparently some problem with time. The petition was withdrawn, and refiled the next day.

I just think, to make the record clear, it should be part of the record.

JUDGE MALONEY: You want to offer it as General Counsel 4?

MR. GREEN: That is correct.

JUDGE MALONEY: Any objections?

MR. KRAMER: No.

MR. SULLIVAN: No.

* * * * *

12 MR. GREEN: Fine.

As I indicated it, the union had initially filed its petition in this matter on August 16th. As I said, for one reason or another, that was withdrawn and another petition was filed on the 6th, encompassing the same unit.

Thereafter, the parties entered into a stipulation for a consent agreement, and ultimately it went to election on October 12th, which the union lost, as indicated by the tally of ballots.

We contend that prior to the election, the company engaged in certain conduct, which, Number 1, would make the election overturnable if I may use that word, and Number 2, a certain kind of conduct was engaged in by the company that would make a fair election at this point in time or even then, rather impossible to hold.

JUDGE MALONEY: Are you seeking a bargaining order?

MR. GREEN: That is correct. Our complaint so stated it.

JUDGE MALONEY: Go ahead.

MR. GREEN: Specifically, what General Counsel is going to put into evidence falls into two categories, the first of which occurred around the middle of August.

Either immediately prior to, or shortly after the original petition was filed, there was a series of directions by the company to the employees that they withdraw any authorization cards that they may have signed, solicitations to that end.

Then, later, a speech or two speeches, two days and one day prior to the election itself, where we contend that what the company said in substance was that if this union comes in here and wins this election, there is not going to be any place for you people to be employed.

In other words, we are going to shut this place down.

* * * * *

In an off-the-record conversation the parties have agreed to stipulate that four individuals are supervisors within the meaning of the Act, and therefore are excluded from the bargaining unit, which is involved in this case, to wit, F. Monks, C. Mancuso --

MR. GREEN: No, those are the ones in dispute. It would be Fredric Monks, the one on top --

JUDGE MALONEY: Fredric Monks is a supervisor, C. Manucso is a supervisor, Frank Hegedus is a supervisor, J. Romer is a supervisor.

Is that right.

MR. GREEN: So stipulated.

JUDGE MALONEY: The parties agree to that?

MR. KRAMER: Yes.

MR. SULLIVAN: Yes.

JUDGE MALONEY: That is a stipulation.

* * * * *

19 FREDRIC T. MONKS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

JUDGE MALONEY: Give your name and address to this reporter.

THE WITNESS: Fredrick Thomas Monks, Longview House, Box 388, Hamburg, New Jersey 07419.

DIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Monks, will you please tell us by whom you are employed?

A I am employed by the Monroe Tube Company.

Q What is your job there?

A I am the plant superintendent.

Q How long have you been working at Monroe Tube Company?

A Since April, 1973.

20 Q Can you briefly describe your -- very briefly describe your general duties and responsibilities?

A I am responsible for running the operations which cover the plant and also the engineering. My duties are to expand the operation; that is to say, increase the size of the company.

Q To whom are you responsible?

A Mr. Harold Grout, the president.

Q I understand that the company has two facilities. Could you please describe what they are?

A One facility is the manufacturing facility, and the other facility is the company's offices.

Q Will you please tell us where they are located? I mean, is it the same building?

A No. There are two separate buildings about a hundred yards separating them.

JUDGE MALONEY: Are they here in Goshen?

THE WITNESS: Monroe.

Q I would like you to talk now about the manufacturing facility, and I would like you to particularly describe how that functions, how it is broken down, if it is broken down at all, in terms of functions within the facility itself?

A The purpose of the company is to take tubing and draw it to a specific size by cold drawing. The operations are broken down into three
21 or four main groups.

Firstly, we have the receiving and the storage of raw materials. That is one type. These we call the anneiling and pointing facility.

Q Is this a particular department?

A I am thinking in terms of breaking it down into four main departments.

Q Okay, fine.

A This department also pickles tubing. It also --

JUDGE MALONEY: It does what?

THE WITNESS: Pickles. It removes the scale from the surface, rendering it suitable for drawing.

It also points tubing; that is to say, you can put the end of the tube through a dye.

Q Is this the first or second department that we are talking about?

A Yes. I am starting in the beginning, the logical sequence.

Q Since we are talking at the beginning, approximately how many employees are generally employed in this particular function of the department?

A Approximately six.

Q Does it go on a night shift and day shift, or is it just one shift?

A Usually day shift.

22 Q Now, is there any particular person who might be in charge, or the person who assigns work or hands out work to the six employees in this particular department?

A There is a man who assigns work.

Q What is his name?

A A. Pinto.

Q Now, will you please describe what Mr. Pinto does with respect to that function and with respect to the five or six employees?

A As I said, this department receives one specific type of material, buttweld pipes. It is Mr. Pinto's work to -- when a truck arrives, from a supplier, to check what is on the truck against the bill of lading.

He unloads with his men and places it into storage. If the paperwork meets with what they say, it meet, then this is sent to the plant office, the paperwork.

Q You mean the physical bills, the bills of lading?

A Yes, the physical pieces of paper.

Q Well, is Mr. Pinto a salaried employee, or is he an hourly employee?

A Salaried.

Q What about the other five or six?

A They are hourly

Q If you know, does Mr. Pinto make more money than the other five or six employees?

23 A Yes.

Q Can you give a percentage, approximately how much more?

A I would say probably in the area of 40 per cent.

Q 40 percent more?

A Yes.

Q Now, you indicate that Mr. Pinto assigns certain work to these five other people. By that, would you include assigning people to go unload the truck?

A He also would be present when a truck is unloaded.

Q In terms of assigning people to work, which I think is your word, can you tell us what you mean by that? What he does?

A Yes. He would suggest that one man get onto the truck to put the slings around the bundle of pipe. He would suggest another man go to the inventory area to take off the slings.

Usually under these circumstances he will operate the crane.

Q Now, does Mr. Pinto -- these five or six people are doing work. Does Mr. Pinto, from time to time, go over and say -- tell them how to do what they are doing and what they are supposed to be doing?

A He would indicate with certain work how it should be done, especially since we have in the case of new employees.

24 JUDGE MALONEY: Does he exercise judgment in making assignment of employees to do this work?

THE WITNESS: To a slight degree he may move his labor force around, depending on what particular sections are in operation at any particular time.

Q Would he have an occasion to tell an employee that you shouldn't do something this way, but perhaps you should do it a different way?

A Only in the course of training.

Q Would he be the one who is responsible for training employees, who come to that particular department?

A It would be his responsibility to see that the qualityof the material they were producing was acceptable.

Q Would he have anything to do with the retention of employees who were assigned to his department in the first instance?

A What do you mean?

Q Whether or not they should continue or not continue with the company.

A If he had any doubt, he may mention this to the plant manager, but that is as far as his responsibility would go.

Q Do you know if he does that, or has done that in the past?

25 A I recall one case back in July. That is the only case I recall. But--

Q Well, what happened with that particular case?

A The plant manager took it under advisement, and he spoke to Mancuso about it, and eventually the man left.

JUDGE MALONEY: When you say Mancuso, which Mancuso?

THE WITNESS: Charles.

Q Perhaps, you ought to tell us what Charles Mancuso is in the hierarchy of the plant?

A Charles Mancuso is the mill foreman. As I have indicated, the material following from Mr. Pinto's department, storage, pickling, pointing, passes into the mill. There it is drawn through dyes and draw benches.

Mr. Mancuso is responsible for this drawing operation.

Q Now, we are now into the second department?

A Yes.

JUDGE MALONEY: First of all, can Mr. Pinto give time off?

THE WITNESS: No, sir.

JUDGE MALONEY: Can he discipline or reprimand in any way?

THE WITNESS: No, sir. Not officially. He may say some words to the employee, but I would probably hear about it. Any official reprimand would have to come from Mr. Romer.

JUDGE MALONEY: I don't know what you mean by "official reprimand."

26 THE WITNESS: Reprimand in the sense that would he -- he would indicate that he had done the job incorrectly, but that is as far as it would go. Anything further would be Mr. Romer's responsibility.

JUDGE MALONEY: Would he report job deficiencies on the part of his subordinates?

THE WITNESS: He would, yes, if he felt that they were deficient.

Q Would it be part of his responsibility to make any kind of evaluation of employees in that particular department?

For example, new employees or even older employees for the purpose of raises, promotions, or other things of that nature?

A All of the employees know -- new employees know within the first twenty-eight days -- his counseling would be listened to.

Q In terms of what kind of action?

A Productivity, quality of work.

Q For what purpose? That is what I am trying to get at. What purpose would his counseling be listened to, for what purpose?

A It could be two reasons. One, the suitability of obtaining such an individual or secondly, the possibility of transferring this individual to
27 work which was more in keeping with his capability and interest.

Q Does Mr. Pinto play any part in terms of interviewing prospective employees?

A No. I wouldn't say he did.

Q Are there meetings from time to time of the plant management, the people who are the management, just for plant management?

A We do have a meeting, yes. It encompasses management, probably 95 per cent of it.

Q Are these regular meetings that you have?

A Yes.

Q Well, how regular are they?

A Usually weekly.

Q They would encompass as a general matter what type of subject?

A In the main, forward plant planning.

Q Who would the people be who would be invited to this meeting, and who would attend this meeting?

A Mr. Romer, Mr. Hegedus, Mr. Pinto, Mr. Charles Mancuso, Mr. McKiernan was invited; and Treutle is invited, but not as management.

Q Perhaps it might be a good idea if you can just give a title next to each of these particular people so we know who we are talking about.
28 Mr. Treutle, he is what?

A Plant manager.

Q Mr. Hegedus, what is his title?

A Manager.

Q Mr. Pinto, we are talking about him. Does he have a particular title?

A No. Not officially, no title, no.

Q Charles Mancuso, he is the mill foreman?

A Yes.

Q Mr. McKiernan, does he have a title?

A He is supervisor of the fabricating department.

Q And Mr. Treutle?

A He is the inventory clerk.

Q Now, let's go on from the anneiling department. Tell us what would be the next step?

A As I said, it goes into the drawing department, which is under the jurisdiction of Mr. Mancuso. Here the prepared tube is drawn to size, and after drawing, points are cut off, straightened, and it progresses then into degreasing.

If the tube has to be cut to any specific length, that is where it is done. It is then oiled, and it is ready for shipment. That is the extent of that.

Q I don't want to talk about Mr. Mancuso's function specifically.

29 A That is the department.

Q Now, we have covered two departments. Now, why don't you go ahead?

JUDGE MALONEY: How many people in the drawing department?

THE WITNESS: I would estimate about twenty.

Q Does this department have more than one shift?

A Yes, sir. It has an afternoon turn, half-past four until 12 o'clock--no, 1 o'clock.

Q So, this department has two shifts?

A Yes.

Q Go on to the third department.

A The third department is the warehouse department. In this department we have an operation where we cut tubing to small pieces. For a moment this is under the temporary control of Mr. Hegedus. We are expanding this department, and for a moment it is under his control.

Q Well, August, the middle of August, was this under Mr. Hegedus' control or somebody else's?

A I believe it was under Mr. McKiernan's.

Q How many people -- how many employees are in this particular department?

A In the cutting section, we have approximately ten or eleven.

Q Now, again, I want to direct your attention to August of 1973,
30 and I want to talk about the department as of that time.

Now, Mr. McKiernan, what is his function in that department, in that particular period of time?

A He was in charge of the cutting machines.

Q This department is called the warehousing department?

A It is. The warehousing department has two operations within it. One is the cutting. There is a question of space. One is the cutting, and the other is shipping, and to a slight extent, receiving. This is the other side of our receiving department.

JUDGE MALONEY: How many in shipping and receiving?

THE WITNESS: One.

JUDGE MALONEY: Who is that gentleman?

THE WITNESS: Mr. Grillo.

Q And, in the cutting, we are talking about the cutting department, or the cutting section of this department, there were approximately nine people employed. Included in this department -- including Mr. McKiernan?

A Without him, approximately nine.

Q Were the nine, excluding Mr. McKiernan, hourly employees or on salary?

A Hourly.

Q What about Mr. McKiernan, was he salaried?

31 A He was salaried.

Q Can you tell us, approximately, whether or not he made more money than the other employees on hourly basis?

A He made more with respect to one man, very little more, very little.

JUDGE MALONEY: I don't understand your answer sir.

He made more than most, but just very little more than one man, is that what you are saying?

THE WITNESS: Yes. He made more than most. With one man there wasn't that much difference.

JUDGE MALONEY: Who was that one man?

THE WITNESS: Charles Drake.

Q Now, who would be -- with respect to the cutting functions, who would be the one who assigns the work in the morning to these nine other people? Who tells them what to start doing?

A As of the time we are talking about in August?

Q Right.

A This would have been Mr. McKiernan.

Q Would there be anybody who told the employees how to do this type of work, or if there were mistakes, to correct the mistakes?

A This should have been Mr. McKiernan's responsibility.

Q Now, did Mr. McKiernan have anything to do with evaluation of
32 employees in this particular department, in the same way as Mr. Pinto or in another fashion, perhaps?

A No.

JUDGE MALONEY: Whose function would that be?

THE WITNESS: Mr. Romer's.

Q And Mr. McKiernan attended this once-a-week meeting with the other people that you have described before?

A Correct.

Q I take it Mr. McKiernan has moved to a different department, or is this the fabricating department?

A This is the cutting department. Mr. McKiernan is no longer with the company.

Q When you talked about that, that he was in control of fabricating department, this is the same thing that we are talking about now, the cutting machines?

A No, sir.

Q I am sorry, explain it, please.

A Fabricating -- the cutting department cuts it. The fabricating department will bend the tubing to shape and conduct welding operations. They are separate operations.

Q Well, I am confused, then.

A It is a separate operation.

Q I understand, but I am a little bit confused, perhaps because of the time difference.

33 I have here that Mr. McKiernan is in the warehouse in charge of or controlling to some degree cutting machines, and then previously you talked about him being a supervisor of the fabricating department.

Now, is that two different departments?

A Two different operations. One cuts tubing for shipment, the other takes tubing and bends it.

Q Well, which was it?

A He was in charge of both of them.

Q So, these nine people would be doing both of these operations?

A Fabricating department would have about five people.

Q There would be five additional people?

A Yes.

JUDGE MALONEY: He was in charge of two different departments?

THE WITNESS: That is right, he was.

Q Did he ever move a man from the cutting machine to bending pipes or vice versa?

A Not to any great degree.

Q When you say "not to any great degree," did he do that from time to time?

A Probably from time to time he would do it.

Q Can you tell us under what circumstances he might do this, or he
34 has done that, not "might"?

A I wouldn't say that he moved a man from the cutting machine into fabricating. Usually, you have about six men cutting and three men, after

you cut it, you still have to perform a minor operation on the end of the tube to remove any burs. These are the sort of men he may apply in the fabricating nature.

Q Might there be a situation where one man may run out of work to do, so there is more work in the other place, and he would say, "Go over there and do that"?

A Particularly if you have a customer pressuring you.

Q Did Mr. --

JUDGE MALONEY: Did he exercise judgment in doing this?

THE WITNESS: To a certain degree, most of the judgement here was on the pressure from the plant manager, messages from the general office.

JUDGE MALONEY: But the selection would be his?

THE WITNESS: Yes.

Q Would he make that selection on the capability of one man to do certain things, that one man is more capable than another?

A No. I wouldn't think in terms of that. Availability.

Q Availability?

35 A Yes.

Q Did Mr. McKiernan have anything to do with, or have any say in questions concerning raises or promotions with respect to the people in these two departments?

A No. I wouldn't say so.

Q Was he at all consulted with respect to requests for raises or decisions to make raises?

A No.

Q Well, was there anybody else who had first-hand knowledge of these two departments, who looked at it all the time apart from this gentleman?

A I would say the plant manager was.

Q So, Mr. McKiernan reported to the plant manager?

A Yes.

Q Did Mr. McKiernan report to anybody other than Mr. Romer?

A No, sir.

Q Now, you described -- you said there was a fourth one?

A I was thinking in terms of the fabricating department.

Q Oh, I see.

A Receiving and anneiling, mill operation, cutting and warehouse are under the same roof.

Q What is Mr. Romer's responsibility?

36 A Mr. Romer attends to the day-to-day running of the plant and other type of work, production manager type work.

Q Would he physically be at any one particular place, or would he be throughout the entire place, making sure that everything is running?

A Throughout the entire place.

JUDGE MALONEY: How many employees are under his supervision?

THE WITNESS: I would guess in the area of fourteen or fifteen.

JUDGE MALONEY: Would he be responsible for the night shift or day shift?

THE WITNESS: Yes.

Q Was Mr. Romer present at the night shift? Is he at the plant during the night shift?

A Probably the first two hours, at the start of the shift.

JUDGE MALONEY: Who would be in charge then?

THE WITNESS: James Verbert.

Q With respect to Mr. Verbert -- let's talk about the night shift. How many employees generally would be on the night shift?

A Approximately eight.

Q The night shift runs from -- I think you said about four?

37 A Four thirty to 1 p.m.

Q Mr. Romer would be present from approximately four-thirty to six-thirty?

A It varies. Some nights, yes; some nights, no.

Q Would there be anybody else in the plant during the night shift after Mr. Romer goes home?

A Mr. Grout walks through the nighttime. I come back sometimes.

Q Well, is there somebody who is always there who is designated some sort of responsibility for the eight people on the night shift?

A No. Not continuously.

Q Now, what about Mr. Verbert? What is his responsibility?

A He is responsible for the eight people.

Q He is responsible for those eight people. In what way is he responsible? What does he do?

A He allocates work.

Q Does he do anything else?

A He allocates the work. He will set up benches, in the event of any slight period, he will run the bench or run a machine or participate in the pickling operation, which is run in the afternoon.

Q From time to time he does physical work?

38 A Yes.

Q Could you say what percentage of the time he does physical work as opposed to allocating work or the kind of things he does in the night?

A I wouldn't like to say it because I am not there every night. I would hazard a guess that no more than 50 per cent.

JUDGE MALONEY: In emergency situations, could he send a man home, somebody that would take off in the evening?

THE WITNESS: Yes.

Q Now, you say "set up benches." I am sorry, I don't understand what that means.

A He would have to explain it to Mancuso in the morning, and the consequences would rest in the morning--

MR. SULLIVAN: That was in response him Honor's question, because there was a question from General Counsel also.

Q Would you please explain what you mean by setting up benches?

A When you draw tubes, you draw it through a dye, depending on the size of the tube, so depends the size of the hole in it. Depending on the wall thickness of the tube, so depends the size of the plug.

When you finish running one order, it may not be possible always to arrange for a changeover to occur at the start of the shift or at the end of the shift. You may have to make changes within shifts.

39 This is what Mr. Verbert would be concerned with, or any problems resulting in the night due to incorrectly prepared materials, et cetera, et cetera.

Q Now, is Mr. Verbert an hourly employee or a salaried employee?

A I believe he is salaried.

Q The other employees in the n ight shift, are they hourly?

A Hourly.

Q Does Mr. Verbert, or has Mr. Verbert attended these weekly meetings?

A No, sir.

Q Well, can you tell us whether or not Mr. Verbert earns more money than the other eight people on the night shift?

A Yes, sir.

Q Could you specify approximately how much more he would earn in terms of percentage or any other way you would like to describe it?

A Probably 30 per cent.

Q Now, the eight people in the night shift are all doing exactly the same thing?

A No. One individual will straighten tubing. Another individual will draw tubing. Another individual will pickle tubing. Another individual will degrease tubing.

40 Q Well, would Mr. Verbert, from time to time, change people around from doing one job to another if something gets slow in one area?

A He would do it, but he doesn't like to do this.

Q But he does do it against his wishes?

A In certain instances, yes.

Q Does Mr. Verbert look at the work that is being performed by employees to see whether or not they are doing it correctly or not correctly?

A He should keep a check on it.

Q Would he have authority to say to someone, "You are not doing it right, do it this way and get it right"?

A He would -- should indicate the way it should be done. I hope he would.

Q Now, are there any offices in the plant?

A Yes.

Q Could you describe what kind of offices there are?

A There are two office areas within the plant, one which is occupied by the inventory clerk.

Q Who is that?

A That is George Treutle.

A And the other?

A The other office is the work office, and that is occupied by Mrs. Wood and Mrs. Postiglione.

41

Q So, as of August, there were two people in these work offices, Miss Wood and Miss Postiglione?

A Yes.

Q Could you describe where these offices are in relationship to the plant facility?

A The office Treutle shares with Mancuso is elevated above the middle floor and certainly in the middle of the operations.

The office the two ladies occupy is adjoining the plant manager's office, and that is in the warehouse.

Q Now, is the warehouse physically separated from the plant?

A No, sir. It is all continuous.

Q Incidentally, you mentioned that Mr. Mancuso has an office. Do any of the other people that I talked about, Mr. Pinto or Mr. Verbert, occupy an office?

A No, sir.

* * * * *

Q This is Mr. Romer's office?

A Mr. Romer has an office adjoining their office.

* * * * *

51 CROSS-EXAMINATION

BY MR. KRAMER:

Q Mr. Monks, on the night shift, you said there are approximately eight employees who work?

A Yes.

Q Do they all work in one small area, or are they spread around the manufacturing facility?

A They are spread in three areas.

Q Does Mr. Verbert, does his work take him around so that he can check from one employee to another on a sort of touch basis to see what these men are doing?

A In the sense of touching bases, yes. But mainly, not so much from the employee's standpoint, mainly to keep track of material which flows through the plant.

Q So that he is not so much responsible for their physical presence as he is for the fact that the work is being performed, is that it?

A Well, he is responsible for the work which is being performed. I don't understand, responsible for their physical presence?

Q Well, obviously if the work is being performed they are physically present too?

A Yes, sir.

Q But he must insure a certain amount of quality or performance
52 during the night shift?

A Yes.

* * * * *

54 Q Perhaps you can clarify another matter for me. I thought I heard you mention four separate, say, divisions; one would be receiving and storage, then there is anneiling and pointing; the second would the the drawing department?

A Yes.

Q Where the tubing is drawn?

A Yes.

Q The third would be the warehouse department?

A Yes.

Q I got lost. Was there a fourth?

A Yes. It is just a question of terminology. In the warehouse department, for reasons of space, there is also the cutting and finishing operation, but that isn't called the warehouse department.

We also ship out of there as well. The fourth one is the fabricating, through threading, pipe bending, stuff like that.

* * * * *

56 JUDGE MALONEY: Would you tell, not necessarily mentioning who your customers are, what kind of uses are your products put to?

THE WITNESS: In the back of -- I think it is the Pinto, there is a lug wrench. We make the hexagon tubing which is but to form the actual wrench which goes over the nut to take it off.

We also supply a lot of tubing to automotives, for example, for use in truck bodies.

We supply a lot of tubing for general purpose work, general purpose tubing.

* * * * *

63 FREDRIC T. MONKS

was recalled as a witness and, having previously been duly sworn, was examined and testified further as follows:

JUDGE MALONEY: I remind you, you are still under oath.

CROSS-EXAMINATION

BY MR. SULLIVAN:

Q Mr. Monks, would you please describe for us the supervisory hierarchy of the plant; not the company, just the plant of the corporation?

A Yes.

Reporting to me as plant superintendent is Mr. John Romer. Mr. Hegedus--

reporting to Mr. Hegedus are the engineering personnel.

Reporting to Mr. Romer is Mr. Charles Mancuso, the mill foreman; George Treutle, the clerk; the clericals and Mr. Pinto.

Q Okay. What areas --

A Mr. McKiernan.

Q What areas of the plant are these individuals responsible for?

A Mr. Pinto covers the anneiling, pointing, pickling. Mr. Mancuso covers the mill, and that is the drawing section. Mr. McKiernan is in fabricating.

Q Are these areas of the plant or processors within the production scheme? When you say they cover anneiling, what is anneiling?

A Mainly it is a physical layout of the plant.

* * * * *

72 Q How many times -- on how many occasions did Mr. Grout come to the plant during the evening shifts?

A I would estimate -- this is an estimate -- probably four afternoons out of the five nights.

Q Four out of the five nights he is there?

A Yes.

Q Do you have any idea for how long?

A No, I wouldn't.

Q How often did you come to the plant at night?

A Probably once a month.

Q Are there any instructions issued to anyone concerning the work to be performed at night?

A Only one instruction that I can recall that under no circumstances is any man to be left alone in the plant at night working alone.

Q What about the work to be performed; how is that determined for the night swing?

A By Mr. Mancuso.

73 Q Can you tell us exactly what takes place, how that information finally gets to the employees?

A Mr. Verbert normally arrived at 4:15, and Mr. Mancuso briefed him on the overlap from the day to the evening turn.

The work which is on the benches, the work which is running at the present moment, and the work that he wants performed during the evening. Mr. Pinto, if there happens to be any particular operation in his department which is going to be kept running, will also advise Mr. Verbert.

I am speaking now in terms of pickling. It is verbal and also written.

Q What kind of clothes does Mr. Verbert wear?

A He wears a blue shirt and pants.

Q What kind of clothes do the other employees wear?

A Similarly green.

Q Excuse me?

A They have similar clothing, industrial clothing.

Q It is industrial clothing?

A Yes.

JUDGE MALONEY: It is not a uniform?

BY MR. SULLIVAN:

Q Does the company have uniforms?

A Yes.

Q Is this what you refer to as industrial clothing?

74 A Yes, I would call it industrial clothing. It is issued by the company.

JUDGE MALONEY: Issued to Mr. Verbert?

THE WITNESS: I believe so. I believe so.

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86 Q Now, you also mentioned that, I think, one of these people had a blue working clothes on, and other ones had green. You said they were uniforms, company-issued working clothes.

Would you describe what kind of company-issue working clothes these are?

A The basic design is a pair of pants and a shirt with a name tag on the left chest.

JUDGE MALONEY: You mean individual name tags?

THE WITNESS: James, Jack George.

A (Continuing) Some of the uniforms are blue. Some of them are green.

Q Who wears the green un iforms?

A Normally the operators are blue. I would say supervisor level.

Q Who wears blue uniforms?

A Supervisors, but not necessarily supervisors. Lead men could wear them.

* * * * *

87 JUDGE MALONEY: How about Mr. Verbert?

THE WITNESS: He would wear a blue one.

JUDGE MALONEY: How about Mr. Mancuso?

THE WITNESS: He wears normal clothes.

JUDGE MALONEY: Street clothes?

THE WITNESS: No, working clothes.

JUDGE MALONEY: No uniform at all?

THE WITNESS: No.

Q When did this blue and green uniform come into existence; do you know?

88 A Certainly it was in existence before I arrived at the company.

Q Is there any particular point to it, I mean as far as compaly policy is concerned?

A I haven't been able to determine the point.

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94 THOMAS COCHRAN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

JUDGE MALONEY: Give your name and address to the reporter.

THE WITNESS: Thomas G. Chochran, R.D. 2, Box 75, Warwick, New York.

DIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Cochran, by whom are you employed?

A Monroe Tube Company.

Q How long have you been employed by that company?

A Since January, 1972.

Q What is your job there?

95 A Right now, I am a crane operator for the company.

Q What shift are you on?

A Day shift.

Q Were you on the day shift during the autumn of 1973?

A Yes, sir, I was.

Q Now, Mr. Cochran, did you sign a card for Local 445 Teamsters Union?

A Yes, I did.

MR. GREEN: Can we mark this as General Counsel's Exhibit 6-B?

(Document referred to was marked GC-6-B for identification.)

Q I show you what has been marked as General Counsel's Exhibit 6-B for identification and ask you what that piece of paper is?

A This is a union authorization card for Local 445 of the Teamsters Union. It has my signature on it.

Q Is that your signature?

A Yes, sir, it is.

Q Can you tell us what date you signed that card?

A August 7, 1973.

MR. GREEN: I offer this card in evidence.

JUDGE MALONEY: Do you want to examine it?

96 MR. SULLIVAN: No objections.

JUDGE MALONEY: Admitted as 6-B.

(Document referred to was admitted in evidence.

BY MR. GREEN:

Q Did you solicit cards from any of the other employees?

A Yes, sir.

Q Did you happen to witness other employees signing cards?

A Yes, sir, several.

Q Can you tell us what -- which specific employees you witnessed signing these cards?

A Mr. Edward Hotaling, Mr. Harold Haight, Mr. Wayne MacNaughton, Mr. Willard Carrigan, Mr. John Schoorl, and there may have been others. Oh, yes, Rose and Salvatore LaSpina.

Q Can you tell us, during what period of the time you saw these people sign cards?

A This was on the first day that we were soliciting signatures on the cards. That would be August 7, 1973.

* * * * *

108 Q Which day was it?

A I don't know. I stated to the best of my recollection it was after when we first started handing out the cards.

Q When did you first start handing them out?

A August the 7th.

* * * * *

112 Q How do you know that?

A Because as I said, I had one card solicited. I had one after the the first meeting with Mr. Grout?

Q When was Grout's meeting?

A The Friday after we started soliciting signatures.

Q The Friday. Are you saying the 10th?

A Right.

Q You are certain of that date?

113 A Yes.

132 DIRECT EXAMINATION CONTINUED

BY MR. GREEN:

Q You made mention of a speech that occurred during that week?

A Yes.

Q When was that?

A That would be the Friday, the 10th of August, I believe.

Q Who gave it?

A Mr. Harold Grout

Q Where did it take place?

JUDGE MALONEY: Who is Mr. Harold Grout?

THE WITNESS: He is the president of Monroe Tube Company.

Q Where did it take place?

A In the lunchroom at the factory.

Q Would you tell us what he said and how many people were there?

A They assembled the day shift at four-thirty that afternoon.

Q What, if anything, did he say?

A He said that he understood that someone had been circulating

133 union cards throughout the factory. He also stated that signing one of these cards could have a serious financial and legal consequence for the employees and their families.

Q Anything else said?

A He said he would have a meeting with us later the next week, and he went into that. We were then paid and allowed to go home.

Q Did he say anything about the attorney's instruction, that he had talked to his attorney or talked to an attorney; do you recall?

A Yes. He made some mention of that. Exactly what, I can't remember.

Q Was there a meeting after that?

A Yes, there was.

Q When was that?

A I don't recall the date.

Q Well, approximately how much after? How long after?

A The next week, I believe.

Q Where was this meeting called?

A The same place, in the lunchroom at the factory.

Q Were all the employees there, or just some of them, or what was the nature of the meeting?

A They called the entire day shift together for the meeting we had. They called the whole day shift together, and Mr. Grout at that time -- the sequence of what was actually brought up I don't recall, but he did say that anyone who wanted to get the union card back, he would help them.

He didn't tell anyone to get the card back, but he said he would assist anyone.

Q Please continue.

A He elaborated about the length of strikes that the Teamsters Union has had. He talked about the high amount of fines that have been given to Teamsters who disobeyed the Teamsters.

Q Well, in terms of assistance, you mentioned the word -- he used the words "assist people." Did he elaborate on that, that you recall?

A Yes. He told them that he would give them -- I believe he would give them the address where to send the letter requesting their cards back. He would give them the paper to write the letter on, this type of thing. But he never actually told the people to get the cards back.

Q Did he say anything about people who didn't sign their cards? Do you recall anything said about that?

A About people who didn't sign cards?

Q Who haven't signed a card?

A No, I don't.

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137 EXAMINATION

BY MR. KRAMER:

Q Mr. Cochran, you said that the first speech that Mr. Grout made was on Friday, August 10, 1973?

A Yes.

Q That was in the lunchroom?

138 A Yes.

Q And to the best of your recollection, what time was that?

A That was four-thirty in the afternoon.

Q Was this during your normal working time or after?

A After.

Q What, to the best of your recollection, did Mr. Grout say in connection with union cards? How did he open up his speech?

A He started off by saying, "I understand there are individuals around the plant who are circulating union cards."

He said something to this effect. His exact words I don't recall.

Q Did he indicate to the employees from whom -- from what source he got this knowledge?

A No, he didn't.

Q Who attended this meeting?

A The entire day shift was there. It was the whole company.

Q How about supervisors or other people, or management?

A The supervisors were there. Mr. Grout was there. Mr. Monks was there, and Mr. Romer was there. I don't remember any others.

Q Did he discuss which particular union was soliciting cards?

139 A No. I don't think he did at that time.

Q Do you recall his having any advice for his employees?

A No, I don't.

Q Do you remember if he was more specific in what sort of consequences?

A No, he wasn't.

Q What was the phrase he used?

A Signing one of these cards, you would have serious financial and legal consequences for you and your families.

Q How long did the meeting take place?

JUDGE MALONEY: You mean how long did it last?

Q How long did it last?

A I think about ten minutes, if that long.

Q When was the next time Mr. Grout called the employees together?

A I believe it was sometime next week. I can't be sure.

Q Where was this second meeting?

A In the lunchroom.

Q On this occasion, did Mr. Grout mention the names of the union involved?

A Yes, he did.

Q How did that come about, what did he say?

140 A I don't know, but I remember at that meeting he did mention Local 445 or Teamsters Union sometime toward the beginning of the speech, as I recall.

Q Who attended this meeting?

A The entire day shift and members of management.

Q What time did it take place?

A I don't recall what time that meeting was. It was in the afternoon, I know that.

Q Do you recall working time?

A Yes.

Q Did Mr. Grout in fact give you an address so that you can write and get your card back?

A He didn't give the group an address. Anyone who wanted to get the card back was supposed to go see him.

Q Where did he say they were welcome to meet with him?

A Up in the office, as I recall. He asked them to come up and see him or one of the supervisors.

Q And they would do what for the employees?

A You mean as far as actually writing the letter?

Q Yes.

A They would give them the material to write the letter with, I remember that. Telling them where to send it. This type of thing.

That is all I can really remember about it.

141 Q Did Mr. Grout mention whether he had some language for them to use?

A No. I don't recall. He never mentioned anything about that.

Q How long did the meeting last?

A The time of that meeting, I don't recall.

Q Was there a mass exodus of employees to Mr. Grout's office then?

A No. Not that I recall. Everybody went back to work when the meeting was over.

Q To your knowledge, to your personal observation, did you see any employees at that moment leave and go with Mr. Grout?

A No.

Q Was there another meeting following this?

A Yes. That would be the one of October 11th.

Q Was this shortly before the election?

A Yes, the day before.

Q Who was there?

A The entire day shift was again called together, and members of management were also there, along with Mr. Grout.

Q Do you know the fellows on the night shift?

A I know a few of them.

Q Do you remember if some of them were in there, too?

142 A I don't think so.

Q Can you recall what Mr. Grout started the presentation, the words?

A Yes.

Q Please tell me.

A Should I just describe what happened?

Q Yes.

A Mr. Grout presented a savings bond, I forget the amount of it off-hand, to one of the fellows who had guessed the longest Teamster strike.

JUDGE MALONEY: Tell me what is the length of the longest Teamster strike?

THE WITNESS: I don't know, your Honor. I forgot.

JUDGE MALONEY: Who won the savings bond, do you remember?

THE WITNESS: No, I don't.

Q Do you remember the amount of the savings bond?

A I think it was $25. I think; I am not sure.

JUDGE MALONEY: Was the bond handed out at that point?

THE WITNESS: Yes.

BY MR. KRAMER:

Q Was there a consolation prize?

A It was one of those contests where several men came very close, and Mr. Grout handed out several bonds. I don't remember whether it was
143 the longest strike or the largest fine. He did hand out several bonds.

JUDGE MALONEY: You mean to somebody other than the winner?

THE WITNESS: Yes. Apparently these men had won or it was a tie situation. I don't recall the exact circumstances.

JUDGE MALONEY: Do you remember the total number of bonds that were handed out on that occasion, or the approximate number of bonds?

THE WITNESS: The approx imate number?

JUDGE MALONEY: Yes.

THE WITNESS: I wouldn't want to hazard a guess. I can give you a ball-park figure, maybe five, to the best of my recollection.

BY MR. KRAMER:

Q Any other prizes?

A No. That was it. He handed out the bond for the two contests, then Mr. Monks went ahead and explained. --

Q Just bonds, no fishing equipment, trips to Bermuda, or anything like that?

A No, nothing like that.

Q After this ceremony, what was the next thing that Mr. Grout brought up?

A Mr. Grout turned the meeting over to Mr. Monks who explained
144 to the employees how to vote in the election the next day.

Q How did Mr. Monks tell them to vote?

A I don't recall. He didn't tell them how to vote. He just showed the people an empty ballot bax and explained how it would be sealed. He showed them that there were two sections that would be marked "Yes Union" and one for "No," and he explained that you should make a markfor whatever you wanted, fold it up and put it in the box and leave it in the box.

Q He was just describing the mechanics of voting?

A Yes.

Q Did Mr. Monks or Mr. Grout, at this time, have any expression of opinion as to how employees should vote?

A At that particular time?

Q Yes.

A No.

Q After Mr. Monks described the procedure of voting, what happened?

A Mr. Grout took the floor again. He made some mention of the length of the Teamsters strike again and the amount of the fine. Then he talked about the company being his 100 per cent, about the offers he had to sell it, but he wouldn't, because of his own personal concern for the employ-
145 ees. However, he said, "I would leave it to your imagination what could happen if the union was voted in."

Q Did Mr. Grout relate on what occasions he had offers to sell previously?

A No, he didn't.

Q Was this also in the lunchroom?

A Yes.

Q And approximately what time did it start on October 11th?

A Two-forty.

Q To the best of your recollection, how long did it last.

A Approximately fifteen minutes, maybe four or three forty-five.

Q So, this whole thing took an hour or more?

A Yes.

Q I take it that in addition to anything on paper, any written speech, there were discussions off the record, you might call, the conversations between employees or management and the employees?

A No. There weren't any questions asked there. In other words, it was not thrown up as a question-and-answer type of situation. We were just given a speech.

JUDGE MALONEY: Anybody speak beside Mr. Monks and Mr. Grout?

THE WITNESS: No, your Honor.

146 BY MR. KRAMER:

Q In respect to the awards of the savings bonds, was Mr. Grout reading from a prepared statement?

A That, I don't recall. Yes, I believe he was, yes. Because he took the bonds from the statement he was reading.

Q Do you recall when the election was the next day?

A Yes, 4 o'clock.

MR. KRAMER: No further questions at this time.

JUDGE MALONEY: Let's take a five-minute recess before cross-examination begins.

Off the record.

(A five minute recess was taken.)

JUDGE MALONEY: On the record.

Mr. Kramer, do you want to say something for the record?

MR. KRAMER: I just wanted to ask a few other questions.

JUDGE MALONEY: All right.

EXAMINATION CONTINUED

BY MR. KRAMER:

Q You were asked specifically who attended the three meetings in the lunchroom that Mr. Grout spoke at. I believe you told us that the entire day shift was assembled on each one of the occasions?

A To the best of my knowledge, everyone was there.

Q I want you to think, in particular, to the best of your recollection
147 were either Miss Wood or Miss Postiglione present at any of these three meetings?

A No.

MR. KRAMER: Thank you. I have no further questions.

JUDGE MALONEY: Cross-examination?

CROSS-EXAMINATION

BY MR. SULLIVAN:

Q So, we get this in some sort of sequence; we have three meetings?

A Yes.

Q One meeting at about the time the cards were being circulated?

A Yes.

Q The second meeting, which was concerning the cards again, was about a week later?

A Yes.

Q Was that meeting about, just for purposes of time, about the time the petition was filed?

A I don't recall.

Q The third meeting was a meeting about a day before the election?

A Right.

Q Now, at the second of those three meetings, was this when there was a discussion concerning the return of the union authorization cards?

148 A Yes.

Q You mentioned certain parts of the second meeting in which you have somewhat of a recollection, and I believe you also testified that some you can't recall.

Can you tell us anything about where you were during the meeting, where were you physically in the lunchroom?

A Well, there is a large table which runs the length of the lunchroom. During that second meeting, I was sitting at the far end of that table. Mr. Grout was standing perhaps five feet, six feet in front of me.

Q You were at the end of the table?

A Yes.

Q Where was Mr. Grout in relationship to the table?

A Let's say I was sitting at this wooden table, and the end of this large bench. Perhaps if you were to back up five steps, something like that. (Indicating)

JUDGE MALONEY: What are we talking about, 25 feet?

THE WITNESS: Not even that.

JUDGE MALONEY: Less than 20 feet?

THE WITNESS: Ten feet.

Q Do you recall the individuals that were sitting near you?

A No, I don't.

Q Do you recall the day of the week when this meeting took place?

149 A No.

Q Do you recall the date of the meeting?

A No.

Q You have testified on direct examination that you don't recall the sequence of items discussed by Mr. Grout at the second meeting.

Do you recall what items were discussed during that meeting, the sequence but what came up at the meeting?

A Mr. Grout discus ed the length of the Teamsters strike and the amount of the Teamsters fine, and he brought up the subject of return of cards.

In other words, a man writing to get his card back from the union.

Q What were his exact words concerning that?

A I don't recall.

Q You don't recall?

A No, I don't.

Q In an attempt to probably refresh your recollection, might Mr. Grout have said that if you've been refused the return of the card, I suggest you write a letter to the Teamsters Local 445 and ask for your cards back?

A Yes, he could have said that.

Q Does that refresh your recollection as to what he did say?

A No.

150 Q Do you remember him saying that?

A That, no.

Q Why do you say he could have said it?

A Because this was the drift of the conversation. This is what the man brought out. This is what stuck in my min d.

Q Would you deny that he did say it?

A No. I wouldn't deny it.

Q What about the following: Might Mr. Grout have said, after what I've just mentioned to you, continuing, "Keep a copy of your letter, and if you need the use of copying equipment, I will see that you get it"?

A He could have very well said that, yes.

Q Do you have any recollection of him mentioning -- saying that?

A Yes. I do have some recollection of him bringing that up.

Q This is concerning the photocopying that he mentioned?

A This is concerning the return of the cards, the use of the equipment.

Q This was the use of the equipment. Was this the type of assistance Mr. Grout was referring to you?

A Yes.

Q Did Mr. Grout actually use the words "paper" at any time? Do

151 you recall that? Can you testify if he used the word "paper"?

A I can't swear to it, no.

Q Did Mr. Grout refer to any individual, to your recollection, who would do photocopying for him?

A No.

Q Did he refer to any particular supervisor who would render assistance?

A No.

Q He didn't. Then, for example, did he say a supervisor will help you in this?

A No.

Q Did he then say that he would help?

A Mr. Grout personally?

Q Yes.

A No.

Q Nothing like that?

A No.

Q Moving on to -- I guess it is the last of the three meetings, this would be the meeting of October 11th. How well do you recall what was said at that particular meeting?

MR. KRAMER: Your Honor, that is about as subjective a question as --

MR. SULLIVAN: I will rephrase it.

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174 Q What about where he said he would not close the plant?

A No. He never said one way or the other whether he would or he wouldn't.

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202 THE WITNESS: Wayne MacNorton, 316 Carriage Hill Apartments, Goshen, New York.

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206 CONTINUED EXAMINATION

BY MR. GREEN:

Q Now, Mr. MacNorton, were you present at any time after you signed this card when Mr. Grout addressed, assembled employees of the day shift?

A Yes, I was.

Q I would like you to talk about the first time. Try to describe when that occurred?

A The date I'm almost sure of was August 10th, which was a Friday. It was after work during our own time. We were asked to assemble after work and our pay was withheld until he spoke. He opened up by -- before he read what he had he opened by saying that he spoke to several lawyers and

they all advised him against speaking to us, but he felt it was necessary to talk anyway. Then he gave the speech and he talked about -- he realized that cards were being solic ited in reference to a union and he wanted first of all -- he said for those of you who that have not signed cards he recommended
207 not signing a card and he warned us that we might be harassed. They might approach us in different ways, either verbally or physically for the signing of the card which I never experienced or saw. He also mentioned in the speech by signing a card it could have serious consequences on your family and yourself. He didn't go into detai.s as to exactly what those consequences might be, as far as I can remember. Also, at the end of the speech I remember him saying that by signing this card it could be involved in a legal action, and nothing else was elaborated on and as soon as he finished saying that he walked out of the room and would refuse any questioning as far as what he meant, I cannot definitely say.

Q Did anybody from the audience say anything during this occasion?

A Yes. Joe Cordero spoke up right away saying how can signing the card be illegal, something to that nature.

I also spoke up in relation to not his statement, but to the fact that if there are any other meetings I felt it should be held during his time and not our personal time and that ended the first meeting.

Q Joe Cordero, is that Jose Cordero?

A Yes.

Q Did Mr. Grout respond to Mr. Cordero?

A I think he might have said at the most I have no further statement
208 and quickly walked out.

Q Now, going on to the next occasion that you spoke about. Approximately when was the next time Mr. Grout spoke?

A The following week. The exact day I couldn't tell you.

Q What were the circumstances, the times, the place?

A It was during company time. I believe it was in the afternoon. I think it was after our afternoon break.

Q Who was present during that particular occasion?

A All of the production workers and the management.

Q Did Mr. Grout speak on this particular occasion?

A Yes, he did.

Q What did he say?

A I can't remember too much specific information about it. He did mention -- he mentioned some figures, among them he mentioned something about by joining a union and the union is supposed to do so much for you, it could end up costing you a lot. He said some fantastic figure that it could cost you for all these benefits and if you go out on strike or if the union calls you to go out on strike you can lose your job. I guess what he basically did was talk about the effects of the union.

Q Do you recall anything else that he said during this particular occasion?

209 A Offhand, I can't.

Q Do you recall Mr. Grout saying anything again about cards?

A Oh, yes. He said that if you have signed a card you can ask for the card back by sending a letter. He said he would buy the stationery for the letter and I think that is about all he offered. I think he said that he would give the address, and you can ask for your card back.

Q There was some reference in Mr. Corkran's testimony yesterday about a speech on October 11, 1973. Were you at the company at that time?

A No, sir.

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254 CONTINUED EXAMINATION BY

MR. GREEN:

Q Now, Mr. Cordero, there was some discussion this morning about the first meeting that Mr. Grout spoke. I would like you to tell us when that was, what the circumstances were, what he said?

A That was a Friday, 4:30.

Q Which Friday?

A August the 10th at 4:30 he assembled the night crew and the day crew together and we were talking about -- Charlie Mancuso -- there was going to be a meeting. Mr. Grout was going to speak to us. He started the meeting saying I went to about three different lawyers, with speeches I already made, and they all advised me not to say it, but I have one here that I am going to go with and he pursued on saying that it has been brought to my attention that some men had been circulating cards for the union.
255 That it could have legal and something else to your family. Well, after he finished that he said and, besides, it is against the law. So, he did say if you want a copy of this speech you come to the office for it. So, he turned around and walked out. But, before he walked out I asked him did you say it was against the law to join the union. He said I have nothing further to say and walked out the door. I turned around and I addressed everybody that was in the lunch room and I told them he is wrong and that it isn't against the law to join a union. You can join the union any time you want if they can represent them.

Q Did you ever ask them for a copy of the speech?

A I went to the office, this is not the main office, this is the office down in the mill and Frank Malek was there. He is one of the supervisors, and I asked him may I have a copy of the speech and he said next week you get it. That was it.

Q Did you ever get a copy of that?

A I never followed through on that.

Q Did Mr. Grout speak to assembled employees after this first time?

A The following time we were told again by Charlie Mancuso because
256 he is my mill foreman, he told me that on Tuesday there was going to be a speech. Tuesday is the 14th of August and we waited for about five or ten minutes and he came in and said Harry is very busy there is not going to be a speech. So, we went back to work the following day which was the 15th. He assembled us again and it was around 2:30.

Q Who assembled?

A Charlie Mancuso told us that Harry is going to speak to us to go into the lunch room. We went into the lunch room and that is where Harry started his second speech. It was around a quarter to three, I believe that is when he started.

Q What did he say?

A He said I don't know how he started it off, but he said that it has been brought to my attention that a couple of men already have asked for their cards back and that if you would like to have your cards back you can write to Yonkers which was I believe -- he had the card of 445 of our -- you know, giving authorization of the card.

Q Do you mean a blank card like the one I am holding? (Indicating.)

A Yes. And he said you can write to Yonkers for it if you like be-
257 cause on the card it says Yonkers. And, he said that he would give you the paper and the carbon paper because it was important that you have a copy for your own records to prove that you did ask for a card back.

Q Now, he said -- you are saying that he said that -- Mr. Grout had said that some people had asked for their cards back?

A Yes. It was brought to my attention that some already asked for the cards back.

Q Incidentally, had anybody asked you for your card -- for their card back?

A There was one that I know of. This was the first day. John Schoorl asked for his card back.

Q Was he talking to you?

A Me and Kahl was holding the card at the time. This was in the lunch room at 2:30 and he asked for his card back and we gave it to him, but I asked him why. Why do you want your card back. There is nothing to worry about. He claimed that because of his age he was scared that there was going to be reprisals against him. I said they can't do nothing to you because it is legal if you want to join the union. Joe Vecchio was sitting next to him. He said yes. They could make it rough on you.

Q You gave him --

258 A I gave him his card back. I told them give him his card back.

Q Let's go onto before the election.

A This was the -- on the second meeting. He still talked more, but you know, the cards -- he talked about that that the union lied to you, that everything I tell you is the truth. That he said he was forced to give -- not forced, was told by the Labor Board to give a copy of everybody that is on the voting list, names and addresses to the union. Now, they know your address so they will probably come around and try to get you to vote for the union, but don't let them in your house because you don't have to let them in your house. Don't let them in your house.

Q Let's go onto the meeting of October 11th, and I would like you to sort of set the stage for that meeting also?

A The October 11th was the one prior to -- well, you know, in the second meeting too he said I will be handing you literature. You will be getting something through the mail.

Q You got a lot of literature through the mail?

A We got quite a bit, a mess. I couldn't tell you how much.

* * * * *

273 Q Mr. Cordero, did you go to the picnic?

A Yes, I did. But, I can't recall the day either. I know it was on Saturday. I can recall him quiting, but Michael Crane was sitting next to me. He was sitting outside when he quit around ten in the morning Charlie Mancuso drove up and told Charlie Mancuso I am leaving. But, I can never recall him asking me personally for the card. Never. Nobody asked me. Only one man ever asked me for the card and we gave it back to him. I heard rumors that Carrigan -- Willis Carrigan wanted his card back.

Q I am not asking for rumors, thank you. But, you don't remember the date of the picnic either?

A It was the latter part of August. I can't recall. It was on a Saturday. That is all I can recall.

* * * * *

Q You attended all of them?

300 Q Did he advise the employees if they did ask they should have a copy of their request?

A Yes, a copy of their cards. As a matter of fact, he would issue the paper and the carbon copy because he said it was very important that you keep a copy of it for yourself as a record to prove that you did.

Q Did he say I would issue the carbon?

A The carbon too.

Q Plus the paper?

A Plus the paper, yes. As a matter of fact, he said come up to the office.

Q He didn't mention at all anything about photocopying?

A I didn't hear nothing about photocopying.

Q Let me ask you this, Mr. Cordero. Did Mr. Grout say if you have been refused the return of your card our suggestion is to write a letter to the Teamsters Local 445, Yonkers, New York and ask for your card back?

A I don't know about the first part of it, but the latter part yes. He did say that.

Q What do you mean by the latter part?

A I don't know about that if you have been refused a card to write to Yonkers, but I do know that he daid you can write to Yonkers because that was the address on the card.

301 Q Are you telling us you don't recall the first part?

A Not the first.

Q You are not denying that it was said?

A I am not denying that he said that because that speech he talked about an hour, close to an hour.

Q Did he also say keep a copy of your letter, and if you need the use of copying equipment I will see that you get it?

A He did say that to keep a copy of your letter for the record. But, for copying or something you said --

Q You asked him for your card?

Q I will read it again. "Keep a copy of your letter and if you need the use of copying equipment I will see that you get it"?

A No. I don't recall that last part.

Q You don't recall it?

A No.

Q You deny it took place?

A No, I don't deny it either.

Q During the first speech, the first meeting --

A Yes.

Q Did Mr. Grout give any examples of how signing -- joining a union -- strike signing, joining a union would be illegal?

302 A Yes, he said at the end of his speech he said it was illegal to join the union.

Q Did he give you any examples of this illegality?

A No. It came after his speech, and he said besides it is illegal to join the union. That is when I asked him.

Q This came when, after the speech?

A Well, yes. It seems that -- again, it seems to me that after he finished what was on this paper he came out with this and besides it is illegal to join the union.

Q At that point, was the meeting breaking up?

A That is when he -- when he walked out of the door. That gave the indication that the meeting was over.

Q That is when he said it, when he was walking out of the door?

A No. He was standing up still when he said this.

Q Were the employees who were sitting down in the process of getting up that point?

A No. They were all sitting down.

Q Was anybody moving towards the door?

A No. He was standing -- all the management were standing by the door.

Q By the door?

A Yes.

303 Q Do you remember which members of management were present at the last meeting on October 11th besides Mr. Monks and Mr. Grout? Let me help you. Was Mr. Mancuso there?

A Yes, he was.

Q Mr. Romer?

A I don't recall Mr. Romer.

Q Anyone else that you recall being there?

A No, that is about it. I recall Mr. Romer or Mr. Monks, Charlie Mancuso and Mr. Grout. Well, there was Al Pinto in the back.

* * * * *

338 JAMES MENDOZA

was called as a witness first having been duly sworn and examined, testified as follows:

JUDGE MALONEY: Give your name and address to the reporter.

THE WITNESS: James Mendoza, 172 Main Street, Chester, New York.

EXAMINATION BY

MR. GREEN:

Q Mr. Mendoza, were you employed at Monroe Tube Company during the summer of 1973?

A Yes.

* * * * *

343 Q After you signed this particular card, was there any kind of meeting soon thereafter when Mr. Grout spoke to the people on the night shift or a meeting that you attended?

A Yes

Q When was that?

A A few days later.

Q Now, what approximately -- what time was that?

A The first meeting was the day and night shift together while the shifts were changing. I believe we got the benefit of the doubt. We should have been working and we got time off. That was approximately 4:30. So,

344 the night shift took the best and we got time off. We were supposed to start our machines.

Q Did Mr. Grout speak at this particular meeting?

A Yes, he did.

Q What did he say?

A He said it came to his knowledge that there were cards passed around the shop for the purpose of starting a union. He said that there could be serious repercussions from this for anyone that signed the card because your family would suffer and you would suffer and there was legal repercussions from signing these cards. Some words to that effect.

Q Did he explain what he meant by that?

A No. He didn't, not at the time he said it. Joe jumped up and he said that is against the law or that is not legal. We have no representation here. You have no right to threaten these men.

His statement was short. First he explained just like the other fellow said, that he had discussed this with his lawyers and they advised him against making a speech. So, he was making it short and brief which he did. He was pretty upset. He seemed to me angry at the time. Then he started telling us how our families would suffer, you would suffer personally.

345 There would be no personal gains out of this. There is a question of legality of this whole union. Something to that effect.

Q Now, when --

A Or against the law, something like that. That is when Joe jumped up.

Q When Joe jumped up and said whatever he had to say, did Mr. Grout reply?

A No. He ignored Joe.

Q What happened?

A Joe kept talking. He said we wasn't represented here. Mr. Grout just ignored him completely and continued with a few other statements. If there is any question there will be another speech there, another discussion later. And then he abruptly walked out.

Q How long did it take?

A I would say the first speech took about at the outset fifteen minutes, twelve minutes. I know it wasn't long. Ten minutes to fifteen minutes.

Q Now, was there any speeches after that which you attended?

A Yes.

Q When was the next one?

A The next speech was only given to the night shift. I understood it was the same speech given to the day shift, but he assembled the night men about 6 o'clock that night.

346 Q When was this?

A A few days after the first meeting.

Q What did he say at that time?

A This is the speech where he told us about the sore throat. He had laryngitis, and he would have Mr. Monks explain the voting procedure, the cards what it would look like, and etcetera.

Q Now, wait a second. You say this is a couple of days after the first speech, close to the election?

A Close to the election. I didn't mean it was the second day, but close to the election. I only attended two speeches. The first speech I attended with the day shift and the night crew. The second speech I attended with just the night crew where they were the only ones present other than Mr. Monks and Harry Grout.

Q Now --

A And Jimmy Verbert.

JUDGE MALONEY: Jimmy who?

THE WITNESS: Verbert, the night foreman for the mill.

Q (By Mr. Green) Now, can you recall how much before the election this last speech that we are talking about occurred?

A Yes. It was very close to the election. I don't know, a day or two before the election. Very close to the election.

* * * * *

354 Q Mr. Mendoza, how long have you worked on the night shift?

355 A Almost all of the time I was there. They put me on the day shift for about two weeks, three weeks. From then on it was night shift work.

Q Were you a machine operator?

A Cutoff operator.

Q Who assigned you your work?

A Who assigned me work?

Q Yes.

A When I first came there there was nobody really in charge of our department, but John Romer and Frank. It could have been assigned by either one.

JUDGE MALONEY: Frank who?

THE WITNESS: I don't kn ow his last name. I think Hegedus, the gentleman I was speaking about before. Everyone was on a first name basis. A lot of names -- I didn't even know their last names until this thing came about. At any rate, it was assigned by John Romer or Frank Hegedus and then they hired -- they had a gentleman working there but he didn't work in our department. His name was mentioned earlier, a red-headed fellow. There was a fellow in charge of our department later on. I think his first name was Bill. Then, he was supposed to assign us to work but he didn't know

356 anything about our department. He knew everything in back of the shop. That is all he knew about. The only one who knew anything about the cutoff department was Frank and John Romer. John Romer didn't know that much about that. Frank was the one that understood the machine. Everybody else in that whole plant knew nothing about the cutoff machine.

Q (By Mr. Kramer) After Mr. McKiernan was there, then a Mr. Verbert came?

A Verbert had nothing to do with the cutoff machine. Either he was in the mill -- he was the night foreman in the mill. We had no foreman at night. Nobody was in charge of us. You had a job to do. You had to cut 15,000 pieces or 2,000 pieces, whatever the job may be. There was no one to come

into see if you are cutting because you are responsible if those 6,000 pieces were not cut you would have to put it on the work sheet why.

Q You didn't work in the mill?

A No. We were in a shop all by ourselves so for about a 100 yards there was nobody. We were all by ourselves, two men.

Q Now, you said that you only heard two speeches by Mr. Grout?

A That is all.

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416 PERRY NOWAK

was called as a witness, first having been duly sworn and examined, testified as follows:

JUDGE MALONEY: Give your name and address to the reporter.

THE WITNESS: Perry Nowak, 6 Werner Avenue, Florida , New York.

EXAMINATION

BY MR. GREEN:

Q Mr. Nowak, during the summer of 1973, were you employed by Monroe Tube Company?

A Yes, sir.

Q Did you sign a card for the teamsters union?

417 A Yes.

MR. GREEN: Please mark this as General Counsel Exhibit 6R.

(Document referred to was marked General Counsel's Exhibit 6R for identification)

BY MR. GREEN:

Q I show you what has been marked as General Counsel 6R and ask you if you can identify that document?

A This is a card for the Teamsters Local 445 signed by me.

Q Can you tell us when you signed that card?

A August 8, 1973.

Q Do you recall who gave you the card?

A Yes. Charles Rosenstock.

Q Now, with respect to Mr. Verbert, can you tell us what is his relation to you in terms of work concerned?

A He is my immediate superior.

Q What do you mean by that?

A He is the night foreman completely in charge of the night shift.

Q What does he do with respect to -- what does he do?

A He oversees and looks at my work. He checks the quality, the control, if I am doing the work correctly, if the quality of work is done right.

Q If it is not right, did that ever occur?

A Yes.

Q What happened?

A He corrected me as to how it should be done.

Q Well, when you go in the morning, do you do one thing or do you do a number of things?

A I don't do one thing.

Q During the summer, did you do one thing or have you from time to time, done other tasks?

A I have done almost everything in the mill, the shipping area.

421 Q Who tells you -- does anybody tell you to stop doing one thing and do another thing?

A Yes.

Q Who is that?

A Mr. Verbert.

Q Have there ever been cases when you wanted to leave the plant early?

A Yes.

Q On those occasions, who have you talked to?

A Mr. Verbert.

Q What occurred on those occasions?

A He gave me permission to leave. As far as I know, he consulted none of his superiors.

Q I am talking about what you know, what you saw?

A What I know, he gave me permission to leave.

Q What happened?

A I left.

Q Does he wear a uniform?

A Yes.

Q What kind of uniform does he wear?

A Identical to the day foreman.

Q Is it a particular color?

A It is different color than ours. That is the basic difference. It is a light blue top and dark blue pants whereas ours are gray and green.

422 Q Were you present at the time the election, still employed at the company?

A Yes.

Q Prior to the election, did you attend any meetings where Mr. Grout spoke to the employees?

A Yes.

Q When was that?

A There were several.

Q Let's talk about the one preceding the election?

Q The one immediately preceding the election?

Q Yes. I would like you to tell me when that was, if you recall.

A That was on the evening of the meeting given to the day shift. I don't know when that was. Either Tuesday evening or Wednesday evening before the election.

Q When was the meeting, when did it take place?

A Within two or three --

Q I mean during what hours?

A On our night shift, about 6:40.

Q Were night and day shift people present?

A No.

Q About how many workers were present during this meeting?

A Approximately ten or so.

423 Q I would like you to describe what happened at this meeting in terms of who said what to the people.

A Well, to the best of my recollection, Mr. Grout opened the meeting with just a standard phrase perhaps just introducing himself. He immediately turned it over to Mr. Grout who in turn --

Q You mean Mr. Monk?

A Mr. Monk, excuse me, who showed us how the election would take place, who would be where. Generally what we had to do.

Q Now, we are back to Mr. Grout. What did Mr. Grout say that you recall?

A Well, he had several pieces of paper that he kept referring to. He started off by saying that I wish to give you a few facts on how the company was doing. He went on to say to give us facts like he had to pay $500 on every truck that comes in and $500 on every truc k that goes out which other companies do not have to pay. He said he has visited other plants around the country and had seen men standing around waiting for material. He said we cannot afford this here. He went on to say let's face it, I call the shots here. I am the boss. What I say goes. He said other plants have facilities that can draw four pieces of tubing and not one. They can cut several pieces of tubing and not one like ours.

424 Q Did he say anything about airplanes?

A Yes. He mentioned the fact that he bought and sold airplanes and that he was doing very well.

Q Had you heard that before?

A No. Well, yes, I do believe I heard mention of that before.

Q Go on, would you tell us what else do you recall him saying at this particular occasion?

A Offhand, I don't recall.

Q Did he say anything about an important decision that you people would have to make, or something about a decision that he would have to make?

A I don't recall. Not at the meeting. I don't recall that. Oh, excuse me, he definitely brought up the fact that he has had several offers to sell the plant in the past, that most of these offers came from companies who were located in the midwest, which would at least solve the problem of moving the facility to the midwest to accomodate that.

Q During the course of your employment, had you ever heard about offers to sell this plant before?

A Not before this time.

Q This is the first time you heard about some offers to buy or sell this plant?

A Yes.

425 Q Do you recall him saying anything about what might or might not happen after the election with respect to the plant?

A Only the fact that it might be moved.

MR. GREEN: I have no further questions.

JUDGE MALONEY: Anything from you Mr. Kramer?

MR. KRAMER: I have no questions, your honor.

JUDGE MALONEY: Mr. Sullivan?

EXAMINATION

BY MR. SULLIVAN:

Q Mr. Nowak, during the meeting to which you just referred to, the one that was attended by the employees, did Mr. Grout say anything about employees asking him whether he would sell the company?

A Not that I remember.

Q Can you please describe for us the meeting between yourself and Verbert which you mentioned that Verbert gave you a written piece of paper?

A He approached me with a written piece of paper which in essence said, I the undersigned wish to have my teamster card sent back to me. He referred me to sign it. He said sign this, more or less just to sign this.

Q Did he ask you whether you wanted to sign it?

A No.

Q Just told you to sign it, nothing else was said? Is that the entire conversation?

426 A That was about it to the best of my recollection.

Q You are saying by that that nothing else was said or you forgot?

A I am saying to the best of my recollection.

Q Was something else said that you forgot?

A I wouldn't know if I forgot it.

MR. GREEN: I am going to object. This is argumentative.

BY MR. SULLIVAN:

Q Did you forget something?

A To the best of my recollection, that was it.

Q What was Romer's reaction when you said you didn't want to complete the piece of paper?

A He was quite flustered. His face turned red. That is how he was flustered. He persisted on getting me to sign the name of the company and address and that was it.

Q You say persisted. How did he persist?

A Well, he asked me several times.

Q And each time you said no?

A Yes, two or three times.

Q What happened in the end?

A He left.

Q You didn't sign it?

A No. I had already signed it. I didn't write anything else.

427 Q That was the last you knew of that?

A Yes.

Q Did Romer say anything about how he came upon this?

A No.

Q Did Romer ask you whether you had signed it?

A No.

Q Did Romer have any other conversation other than what you have mentioned?

A Not that I can recall.

MR. SULLIVAN: I have no other questions.

JUDGE MALONEY: Any redirect?

MR. GREEN: No, your honor.

JUDGE MALONEY: Thank you very much, you are excused.

(The witness was excused.)

JUDGE MALONEY: Next witness.

MR. GREEN: I call Mr. Hicks

* * * * *

448 THE WITNESS: Edward Willard, 278 East Main Street, Meadtown, New York.

EXAMINATION

BY MR. GREEN:

Q Mr. Willard by whom are you employed?

A Monroe Tube Company.

Q Are you still working there?

A Yes.

Q How long have you been working there?

449 A Seven months.

Q What department do you work in?

A The drawing department, the mill.

Q In the mill?

A Yes.

Q Which shift?

A Night shift.

Q You work on the night shift?

A Yes.

Q Now, did there come a time when you signed a card for Local 445 Teamsters?

A Yes.

Q Who gave you the card?

A I forget the guy's name. It was somebody on the day shift, Mike something.

Q Mike.

A Yes.

MR. GREEN: Mark this as General Counsel's Exhibit 6T.

(Document referred to was marked General Counsel's Exhibit 6T for identification.)

CONTINUED EXAMINATION

BY MR. GREEN:

Q Do you recall when you signed this card, when you got it?

A We were in the lunchroom one night. He asked me if I was interested in having the union or not and I told him yes. So, he said read this card and sign it and give it to me.

450

Q Do you remember when -- when I talk about when I don't mean the time of day, perhaps the best recollection as to the date?

A No.

Q Was it sometime -- I will show you the card itself which is marked 6T. Is that the card you signed?

A Yes.

Q Now, having looked at the card, do you have any recollection as to what month you signed this card?

A It was in October.

Q In October?

A Yes.

Q Look over on the side of the card, maybe that will refresh your recollection?

A Yes, I guess it was.

Q It was what? What is your recollection as to when you signed the card?

A None that I can recall

A August I guess

Q Did you attend any of the speeches where Mr. Grout spoke?

A Yes, I was there.

Q You attended all of them?

451 A Well, I can't remember. I attended two of them I know.

Q That was the night shift?

A Yes.

Q Do you recall signing this card before any of those speeches?

A Yes, a long time before that.

MR. GREEN: I offer 6T in evidence.

JUDGE MALONEY: Do you want to examine?

VOIR DIRE EXAMINATION

BY MR. SULLIVAN:

Q It was signed a long time before both speeches, before any speech?

A Yes, maybe not too long, but before the first speech was made.

Q Definitely before the first speech?

A Yes. It was before the first speech. They didn't even know about it yet, the company.

Q When Mike from the day shift handed you this card, did you sign it immediately at that time?

A Yes.

Q Did you hand it right back?

A Yes.

Q Did you ever ask for the card back?

A Yes.

452 Q When?

A Oh, that is when we had the clam bake?

JUDGE MALONEY: You mean the company picnic?

THE WITNESS: Yes.

JUDGE MALONEY: That is the one that took place on Saturday?

THE WITNESS: Yes. That's when I asked for it back.

Q Who did you ask?

A My night foreman.

Q You asked him for your card?

A He was trying to get me to get it back anyhow so at that time I signed -- he wrote a letter and I signed it to get it back.

Q Can you tell what they put in the letter?

A No.

Q How did this all come about?

A I don't know. He just said -- wanted me to get it back. He asked me a couple of times to sign. So, then, at that point he brought it out and I signed it.

Q Whose words were they?

A They were his words. I just signed it.

Q Did you tell him beforehand that you wanted him to do something like this so you can sign it?

A No.

Q He just handed you a sheet of paper?

453 A He asked me if I wrote to get my card back.

Q Yes. What did you say?

A I didn't want to start with it.

Q You didn't want what?

A To get it back.

Q You didn't want to get it back?

A No.

Q Then what happened?

A He kept asking me to sign another letter and I signed the letter.

Q What about the other letter?

A I don't know. He gave it to the boss. He gave it to the office.

MR. SULLIVAN: Does General Counsel have a copy of this letter?

MR. GREEN: No, I assume you do.

Q Did you ever give a statement to General Counsel, a written statement?

A No.

Q That is to the National Labor Relations Board?

A No.

MR. KRAMER: This is facinating, but it is not voir dire.

JUDGE MALONEY: I would like to know whether or not you gentlemen can tell me or stipulate as to what the date of the company picnic was.

454 MR. SULLIVAN: I would have to check the date. I don't know off-hand.

JUDGE MALONEY: I think it is of interest.

MR. SULLIVAN: I think we can stipulate as soon as we establish the date.

JUDGE MALONEY: Have you completed your voir dire?

MR. SULLIVAN: Yes.

JUDGE MALONEY: Do you have any objections to the admissibility of 6T?

MR. SULLIVAN: No, your honor.

JUDGE MALONEY: 6T is admitted.

(Document referred to was admitted into evidence)

MR. GREEN: I have no further questions.

JUDGE MALONEY: Tell me, was there any drinking at this picnic?

THE WITNESS: Yes.

JUDGE MALONEY: Have you been doing any drinking?

THE WITNESS: Yes, because we went to my house afterwards.

JUDGE MALONEY: Had you been drinking when you signed this list?

THE WITNESS: Yes.

JUDGE MALONEY: I'm talking about the withdrawal of the card, that piece of paper that Mr. --

455 THE WITNESS: I signed it that night at the picnic. We was all drinking. I might have signed another one. I don't know.

EXAMINATION

BY MR. GREEN:

Q Was this picnic after the first speech that Mr. Grout gave?

A Yes, I believe it was.

Q Can you tell us, approximately how much after the speech? Was it a week, two days, five days, or what?

MR. SULLIVAN: Excuse me, we are going to have the exact date in a moment.

THE WITNESS: I don't remember the dates.

JUDGE MALONEY: Anybody have anything further of this witness?

MR. GREEN: Yes. I would like to explore one thing a little bit further.

CONTINUED EXAMINATION

BY MR. GREEN:

Q The business of paper that you signed, that you gave to Mr. Verbert, did it have other people other than yourself on it?

A No, it was just a letter.

MR. GREEN: I have no further questions.

EXAMINATION

456 BY MR. KRAMER:

Q Sir, at this picnic did you see other -- Mr. Verbert go up to other people with letters like this?

A No.

Q Just yourself?

A Well, yes, because he was at my table. He was there with me together, just a couple of other people. He asked me before that I can remember about writing a letter and getting it back.

Q Do you recall the first time he asked you?

A No, I don't remember when it was. I know, it was before the clambake though.

Q Well, the first time he asked you to get it back, did he tell you how he knew you had signed the card?

A I think I told him I signed it when he asked me.

Q He asked you if you signed one too?

A Yes, I told him anyhow I signed one -- one of the cards.

Q Did he ask you if anyone else signed?

A Yes. Yes, sir.

Q Who did you tell him?

A I am not the only one. I know others signed. I knew other people signed.

JUDGE MALONEY: Is there anything further?

MR. GREEN: No, not from me.

457 JUDGE MALONEY: Thank you very much, you are excused.

(The witness was excused)

JUDGE MALONEY: Let's take a five minute recess.

(A five minute recess was taken.)

JUDGE MALONEY: On the record.

The hearing will be in order.

MR. GREEN: I call Mr. Rosenstock.

CHARLES ROSENSTOCK

was called a s a witness, first having been duly sworn and examined, testified as follows:

JUDGE MALONEY: Give your name and address to the reporter.

THE WITNESS: Charles Rosenstock, Lake View Estates, Monroe, New York.

EXAMINATION

BY MR. GREEN:

Q Mr. Rosenstock, who are you employed by?

A Monroe Tube Company.

Q How long have you been working there?

A Since mid March.

Q Where do you work in the company?

A The pickling department.

Q What shift?

A Night shift.

Q You work with Mr. Hicks?

458 A Yes, sir.

Q Now, did there come a time when you signed a card for Local 445 Teamsters?

A Yes, sir.

MR. GREEN: Mark this as General Counsel's 6U

(Document referred to was marked General Counsel's 6U for identification.)

Q Mr. Rosenstock, I show you this document and asked if you can identify that?

A Yes. I can. This is a union card.

Q Is that your signature on that?

A Yes.

Q When did you sign it?

A August 8th, 1973.

* * * * *

466 Q Mr. Rosenstock, after you signed that particular card, did Mr. Verbert ever ask you whether or not you had signed a card for the union?

A You are talking about the union card now?

Q Yes.

A He asked me if I had signed a card.

Q When did he ask you that?

A I think it might have been a week or two after I signed the card.

Q Was this before you sent in the letter to the union?

A Somewhere around that area.

Q Was it before or not?

A I think he asked me if I signed the card before.

Q You sent in the letter?

A Before I sent in my letter, yes.

Q Did he say anything else?

A Well, he asked me if I was serious when I signed the card and at that time I told him I really don't know.

Q What else did he say?

A That was it.

Q He didn't say anything else?

A No, sir.

Q Let me ask you a question. Let's take it -- well, when did you
467 sign the letter to the union, do you recall the date you signed the letter that was sent in to the union asking for your card back?

A No, sir. I have a copy with the date at home.

Q If I say August 16, would that refresh your recollection?

MR. SULLIVAN: Does General Counsel have a letter?

BY MR. GREEN:

Q I would like to ask you, whether or not, getting back to the question when you signed the letter but how much before you wrote that letter did Mr. Verbert ask you whether or not you had signed a card for the union? How many days, or what?

A It might have been a week or so.

Q Now, Mr. Verbert asked you if you knew whether or not you knew other people who signed the cards for the union?

A No.

Q He just asked you if you signed a card?

A To my knowledge he only asked me.

Q Did he suggest anything with respect to your card?

A He asked me if I wanted to write to get my union card back and that he would give me the address.

Q Did he suggest that you sign any kind of petition or that you write your own letter, did he say anything about that?

468 A There was no petition for me to sign.

Q He didn't present you with any pieces of paper?

A No, sir. He didn't present me with anything.

Q Did you give a copy of the letter you signed to the union to anybody else?

A What?

Q Did ycu retain a copy of the letter you sent to the union?

A Yes.

Q Did you give it to Mr. Verbert or anybody in the company?

A When Mr. Verbert gave me the address I wrote a letter myself and gave it to him.

Q You gave what?

A I gave the letter I wrote to him. From there I imagine he took it up to the front office. I received a copy and they mailed it out.

Q The company mailed it out?

A To my knowledge, the company mailed it out.

Q Well, I guess --

MR. GREEN: Mark this as General Counsel's Exhibit 8.

(Document referred to was marked General Counsel's Exhibit 8 for identification.)

BY MR. GREEN:

Q I show you what had been marked as General Counsel's Exhibit 8
469 and ask you if this is the letter that you sent?

A Yes, sir. This is my handwriting. This is the letter that I wrote.

Q Is this the envelope that you used?

A I didn't mail the letter.

Q So, you didn't prepare the envelope?

A No.

Q Is this your handwriting on the top?

A No, sir.

Q None of the handwriting on the envelope is yours?

A No, sir.

MR. SULLIVAN: May I see it?

MR. GREEN: Certainly.

on there?

JUDGE MALONEY: Who did you give that letter to when you finished writing it?

THE WITNESS: James Verbert.

JUDGE MALONEY: Who is that?

THE WITNESS: My night foreman.

JUDGE MALONEY: Do you have any objection to this?

MR. SULLIVAN: No, your honor.

JUDGE MALONEY: 8 is admitted.

(Document referred to was admitted into evidence.)

CONTINUED EXAMINATION

BY MR. GREEN:

Q Will you please tell us what Mr. Crane's current position is in
470 the company?

A From what I understand, he is foreman of the fabrication department.

Q That is his current job?

A Right now.

Q Do you have any idea when he became foreman of the fabrication department?

A No, sir. I don't. As I said, the fabrication department is way on the other side of the building.

MR. GREEN: Thank you. I have no further questions.

JUDGE MALONEY: Mr. Kramer?

EXAMINATION

BY MR. KRAMER:

Q Mr. Rosenstock, I show you what has been marked General Counsel's Exhibit 6R a Local 445 card from Mr. Perry Nowak, General Counsel's Exhibit 6S bearing Mr. Hicks' signature and General Counsel's Exhibit 6U bearing your signature. Would you take a look at this please? (handed to witness)

A Yes.

Q Do you know that all three of the cards have the same date, August 8, 1973?

A Yes.

Q How soon after these three cards were signed on August 8, 1973, did Mr. Verbert ask you if you had signed a union card?

471 A I would say mine within a matter of a few days. I don't know about the other two.

Q A matter of a few days. Would that have been around the time of that first speech by Mr. Grout on Friday, August 10th?

MR. SULLIVAN: Friday what date?

MR. KRAMER: Friday, August 10th.

JUDGE MALONEY: That would be the 11th. I am sorry, you're right, the 10th.

THE WITNESS: Excuse me, can I have the question again?

BY MR. KRAMER:

Q When Mr. Verbert asked you whether you had signed the card, would that have been around Friday, August 10th, the day Mr. Grout made the speech?

A I wouldn't know.

Q But, he did ask you a few days after August 8th?

A Yes. I couldn't know if that was before the speech or after the speech.

Q But, in your own mind it was around that time?

A I would think so. I would think so.

Q How long have you been employed by Monroe Tube?

A I think since mid-March.

Q Is this the card that you gave to Mr. Hicks?

A That is his signature.

472 Q Where did you give him this card?

A In the lunchroom as he was walking towards the bathroom. I told him as he was opening up the door and I gave him the card.

JUDGE MALONEY: Did you go into the bathroom with him?

THE WITNESS: Yes. I handed him the card then I walked out.

BY MR. KRAMER:

Q How long did all this take place?

A You mean between me and him?

Q Dave Hicks?

A A couple of seconds. I followed him in there, gave it to him and I walked out.

Q Did you have any conversation with him?

A I told him what was said to me about what this card meant. After he signed it, I assumed he read it and gave it back to me.

Q You read it yourself before you signed it, didn't you?

A Yes. I glanced through it.

Q How do you get to work?

A Excuse me?

Q How do you get to work?

A My father drives me.

Q You don't go drive with Mr. Verbert in his car?

472 A No, sir.

JUDGE MALONEY: Anything further?

MR. KRAMER: No further questions.

JUDGE MALONEY: Anything from you, sir?

MR. SULLIVAN: Yes, your honor.

While Mr. Rosenstock is here I would like to know if it is permissible to make him my witness?

JUDGE MALONEY: Make him your witness? For what purpose?

MR. SULLIVAN: For the purpose of inquiring about the speeches.

MR. GREEN: I would suggest that it be done --

MR. SULLIVAN: It is only for the purpose of receiving testimony.

MR. GREEN: We have other witnesses we would like to get through with today.

JUDGE MALONEY: Do you have any cross examination?

MR. SULLIVAN: No, sir.

JUDGE MALONEY: You are excused.

(The witness was excused.)

MR. GREEN: Your honor, at this time, since I have learned things at this hearing we would move to amend the complaint again, specifically paragraph 8. Make it paragraph 8. Make paragraph 8, 8A and add paragraph B to paragraph 8A alleging that on or about 1973 respondent at its
473 premises by Jimmy Verbert its supervisor and an agent interrogated employees concerning whether or not they signed cards for Local 445.

JUDGE MALONEY: Any objections to that amendment?

MR. SULLIVAN: No, your honor.

JUDGE MALONEY: Granted.

MR. GREEN: I call Mr. Carl.

CHARLES CARL

was called as a witness, first having been duly sworn and examined, testified as follows:

JUDGE MALONEY: Give your name and address to the reporter.

THE WITNESS: Charlie Carl, Jr., 14 Hillside Avenue, Greenwood Lake, New York.

EXAMINATION

BY MR. GREEN:

Q Mr. Carl, by whom are you employed?

A Monroe Tube Company.

Q How long have you been employed?

A It will be six years May 20th.

Q In what department are you in?

A I take care of the bench. I operate it and set it up.

Q Is that in the mill?

A Yes, sir. It is.

Q You work in the day or night?

A I work day shift 8:00 to 4:30.

* * * * *

500 PERRY NOWAK

was recalled as a witness, having been previously duly sworn and examined, continued to testify as follows:

JUDGE MALONEY: Mr. Nowak, I remind you you are still under oath.

MR GREEN: Never mind.

JUDGE MALONEY: You are excused, Mr. Nowak.

(The witness was excused.)

JUDGE MALONEY: Off the record.

I understand there has been some testimony in the course of the hearing concerning the company picnic which occurred in August of 1973.

I understand the parties are willing to stipulate that the picnic took place on Saturday, August the 18th, is that correct?

MR. GREEN: That is correct.

MR. KRAMER: So stipulated.

MR. SULLIVAN: So stipulated.

JUDGE MALONEY: The stipulation is received.

* * * * *

555 NORMAN A SINSABAUGH

was called as a witness, having first been duly sworn by the Administrative Judge, in answer to questions testified as follows:

MR. MALONEY: State your name and address to the reporter.

THE WITNESS: Norman A. Sinsabaugh, 37 Hillside Terrace, Monroe.

DIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Sinsabaugh, by whom are you employed?

A Monroe Tube Company.

Q How long have you worked there?

A Seven years.

Q What is your job there?

A In finisher.

Q Do you work days or nights?

A Days.

Where are the other cards?

556 MR. GREEN: Mark this as 6-Z.

(Whereupon the above document was marked as General Counsel's Exhibit 6-Z for identification, as of this date.)

Q Mr. Sinsabaugh, I show you what has been marked as General Counsel Exhibit 6-Z for identification and I ask you if you can identify this paper.

A Yes. This is the card I signed.

Q Is that your signature on the card?

A Yes, it is.

Q The date that appears on the lower left-hand corner, is that your handwritint?

A Yes, it is.

Q Is that the date you signed the card?

A Yes, it is.

Q Do you recall who gave you this card?

A Charlie Kahl.

Q Do you recall who you gave it back to?

A I gave it back to Charlie Kahl.

Q Did he say anything to you before you signed it?

A He handed me the card and also said to me, "Would you like to join the union and it would be to your benefit." I said -- that's all he said.

Q Okay.

MR GREEN: I offer General Counsel Exhibit 6-Z in evidence.

557 Q Did you read the card before you signed it?

A I glanced at it roughly.

MR. GREEN: I offer it.

MR. MALONEY: Do you wish to examine?

MR. SULLIVAN: Yes.

VOIR DIRE EXAMINATION

BY MR SULLIVAN:

669 Q The first was shortly after that?

Q Mr. Pinsabaugh, did you have any other conversation with anyone who was soliciting cards before you signed this card?

MR. GREEN: I object to that. That's not proper voir dire.

A None that I can recall.

MR. MALONEY: Just a minute. Let me rule on the objection.

Actually the answer does not really matter, but I think that we ought to limit it to the people who solicited the cards.

MR. SULLIVAN (Continuing):

Q Did Charlie Kahl, the man who asked you to sign the card, say anything about an election when he spoke to you about this card?

558 A No, he did not.

Q I believe your testimony was that it was signed on August 8 by you -- by the date that appears on the card?

A Right.

Q Did you ever ask for the return of this card?

A Yes, I wrote to have the card returned.

Q Wrote to whom?

A To the union.

Q Do you know when that occurred?

A On, August 16, 1973.

Q That was the date?

A Yes, sir.

MR. SULLIVAN: Does General Counsel have --

MR. GREEN: Yes. I am going to give it to you. I think it's really out of the scope of the voir dire but --

MR. MALONEY: Do you have any objection to the card?

MR. SULLIVAN: No objection to the card that was signed on August 8, and then the witness said it was later revoked so it's --

MR. MALONEY: Do you have any objection to the admissibility of this card in evidence?

MR. SULLIVAN: Not at this time.

MR. MALONEY: This is the time to make the objection.

MR. SULLIVAN: None.

MR. MALONEY: All right. Without objection it's marked as General
559 Counsel Exhibit 6-Z and is admitted in evidence.

(Whereupon the above document was marked as General Counsel Exhibit 6-Z in evidence as of this date.)

MR. MALONEY: Do you have any cross examination, Mr. Sullivan?

MR. SULLIVAN: Yes.

Mark this for identification as Respondent's Exhibit 3.

(Whereupon the above document was marked as Respondent's Exhibit 3 for identification, as of this date.)

CROSS EXAMINATION

BY MR. SULLIVAN:

Q Mr. Sinsabaugh, I show you what has been marked as Respondent's Exhibit 3 for identification, a letter dated August 16, with the signature of Normal A. Sinsabaugh, and I ask you if this is the letter which you referred to a moment ago.

A Yes. This is the letter.

Q Is your signature appearing on that paper different from the handwriting of the letter?

A Yes.

Q Did you write the letter?

A No, I did not actually write the letter. It was written for me and I signed it and dated it. I signed my name to it.

560 Q Who wrote the letter?

A Mr. Chimas' wife wrote the letter. His wife wrote the letter for me and I signed my signature.

Q How did that occur? Would you explain the facts?

A We was -- I was over at his house that night and I was seriously thinking about getting the card back. So, like I stated, the card to write in to ask for it back, so I asked Henry's wife if she would write the letter for me and I would sign it.

Q Did anyone tell you to take this action?

A No.

MR. SULLIVAN: Your Honor, this is only a copy of this document that I have just received from General Counsel and I would move at this time to introduce it into evidence.

MR. MALONEY: As Respondent's Exhibit 3?

MR. SULLIVAN: Yes.

MR. MALONEY: Any objection?

MR. KRAMER: Yep.

MR. MALONEY: What is the objection?

MR. KRAMER: Well, sir, it's dated, I believe, August 16.

MR. MALONEY: Is that your signature?

THE WITNESS: Yes.

561 MR. KRAMER: The cutoff date was August 15.

MR. MALONEY: Yes, counselor.

MR. SULLIVAN: If I may reply? One of the elements of this case involves the remedy.

It is conceivable that there will be no unfair labor practice as of August 15, as alleged in the complaint and another date then may become in issue.

MR. MALONEY: What date is that?

MR. SULLIVAN: Well, the date alleged, for example, in the last statement. Therefore, this would be relevant on the majority.

MR. MALONEY: Let me see if I understand you correctly.

You are saying that -- or, are you saying, I don't know, assuming that the union achieved the majority status on August the 15th, and as of this moment they have not yet demonstrated it, the fact that they did not have the majority status at some later date, such as October the 11th, should have some bearing on the remedy.

MR. SULLIVAN: Yes, Your Honor. The date may be -- the date is critical and the date may very well not be August 15. Maybe a later date.

MR. MALONEY: Why?

MR. SULLIVAN: Excuse Me?

MR. MALONEY? Why?

562 MR. SULLIVAN: Because there will have been no dissipation of the majority status by the employer if the union can show a majority status as of, say August 15 or 16.

MR. MALONEY: It would have been immaterial. I don't follow you.

MR. SULLIVAN: There would be no action by the employer which would have interfered or dissipated any status achieved by the union.

MR. MALONEY: I have not heard your evidence.

MR. SULLIVAN: The only action that possibly might be shown in this case might be an action that is well after August 15 or August 16 and then it becomes the critical point in time to measure a majority status.

MR. MALONEY: Well --

MR. KRAMER: It's a very interesting theory.

MR. MALONEY: Just a moment, Mr. Kramer. I will call on you if you wish to be heard when Mr. Sullivan is finished.

Well, there's evidence in this record and I don't know whether I am going to credit it or not, to theeffect that an active effort on the part of your client to dissipate the union's majority status, beginning on Friday, August the 10th. Now, I have not heard your evidence whether you're going to admit it or rebut it or controvert it in any way.

563 You may be able to do so successfully, but there's at least evidence in this record which, if credited, would indicate a campaign on behalf of the respondent to dissipate the union's majority status which antidated the signing of this letter.

MR. SULLIVAN: The question is going to be whether it was unlawful dissipation.

MR. MALONEY: Well, do you think these solicitations of individuals to withdraw their union cards, assistance to individuals in procuring the withdrawal of their union cards is not unlawful?

MR. SULLIVAN: As we have said, Your Honor, all of the evidence is not in the record. I think it's premature at this point to come to any conclusion as to what the facts are concerning this matter.

MR. MALONEY: Well, I suppose you are right, Mr. Sullivan, and with that admonition, I'm going to offer that -- suggestion, I should say, I'm going to admit Respondent's Exhibit 3 for whatever it's worth; but I tell you very frankly, at this point, I'm not sure what it's worth. Well, it's in.

(Whereupon the above document was marked as Respondent's Exhibit 3 in evidence, as of this date.)

MR. MALONEY: Are you through, Mr. Sullivan?

564 MR. SULLIVAN: Yes.

MR. MALONEY: All right. Any redirect?

REDIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Sinsabaugh, after you signed this card, did you attend the meeting that was held where Mr. Grout spoke for the first time to the assembled day workers?

A Yeah.

Q You were there?

A Yeah.

Q Were you at the meeting the following week when Mr. Grout spoke?

A Yeah.

Q Now, I take it that -- well, don't take anything, but when you wrote this letter, was that after the two speeches by Mr. Grout to the employees?

A After, yes. I will have to say yeah, it was.

Q Uh huh.

Now, just a matter of curiosity, did you give anyone in the company a copy of your letter?

A No.

Q Okay.

Prior to the time that you wrote this letter, had anybody in the company, and by that I mean not workers, but Mr. Grout or any of the foremen or supervisors, did any of these people ask you in words or substance as to
565 whether or not you had signed the card for the union?

A No.

Q Mr. Sinsabaugh, you are saying that --

MR. MALONEY: Do you wish to read the letter, Mr. Green?

MR. GREEN: Yes.

Q You say -- you are saying that they had writing on the top, is Mrs. Chimas'?

A Yes.

Q Did she write the other letter, too?

A She only -- the only letter that is written, she wrote this one (indicating) for me and Mr. Chimas and I wrote the same identical letter.

Q Did Mr. Cochrane write aletter? Was Mr. Cochrane there?

A No.

Q Mr. Cochrane was not there?

A No.

Q So, you did not see -- well, obviously, you wouldn't have seen Mrs. Chimas write a letter for Mr. Cochrane; is that right?

A Right.

Q Okay.

MR. GREEN: I have no further questions.

MR. MALONEY: Any questions, Mr. Kramer?

566 MR. KRAMER: No, sir.

MR. MALONEY: There's an address on this envelope, 2 Port Street Yonkers, New York, purporting to be the address of Local 445.

Where did you get the address from?

THE WITNESS: I obtained it in the office of the company.

MR. MALONEY: From whom?

THE WITNESS: Mr. Grout.

MR. MALONEY: From Mr. Grout personally?

A I don't recall what day it was

THE WITNESS: No, not personally.

MR. MALONEY: From whom?

THE WITNESS: John Romer, the foreman, brought down the address for anyone that wanted an address so if they did decide to write to have the card back, they had the address.

MR. MALONEY: When did this take place, sir?

THE WITNESS:(No response)

MR. MALONEY: How many days before you wrote this letter?

THE WITNESS: I can't recall offhand.

MR. MALONEY: Were you supplied with a text or a suggested text of what to write to the union by anyone?

THE WITNESS: No, I was not.

MR. MALONEY: You composed that yourself or Mrs. Chimas composed it?

567 THE WITNESS: I composed it myself.

MR. MALONEY: All right.

Did Mr. Romer speak to you personally when he gave you this address in Yonkers, New York?

THE WITNESS: No. He -- all he had said to me, he handed me a bunch of addresses, he said to hand them out to anyone that would like the address. That's all.

MR. MALONEY: Addresses of what?

THE WITNESS: Of the union.

MR. MALONEY: You mean the addresses were on separate pieces of paper or cards?

THE WITNESS: Separate sheets of paper.

MR. MALONEY: With that --

THE WITNESS: I can't remember the exact number.

MR. MALONEY: What is your best estimate of the number of addresses he gave you?

THE WITNESS: Oh, I would say maybe five, I guess.

MR. MALONEY: Did you hand these out to the other employees?

THE WITNESS: Only one. I gave one to Henry Plainman (Phonetic), that I recall.

MR. MALONEY: Before Mr. Romer gave you the addresses of the union on the separat e sheets of paper, did he also speak to you about this matter, in any way?

568 THE WITNESS: Not that I recall.

MR. MALONEY: He just walked up to you in the plant and just handed these to you?

THE WITNESS: No.

I went in the office and he handed them to me there.

MR. MALONEY: In the office?

THE WITNESS: Yeah.

MR. GREEN: I'm really not sure --

MR. MALONEY: He said that he walked into the office, seeking to obtain the addresses; is that correct?

THE WITNESS: Right.

MR. MALONEY: You spoke to Mr. Romer?

THE WITNESS: Yeah. I asked him for the address. He said he would get them for me and give it to me.

MR. MALONEY: Then at a later time he came and gave you the addresses?

THE WITNESS: He handed them to me.

MR. MALONEY: Along with other sheets of paper?

THE WITNESS: Right. Right.

MR. MALONEY: At that point he asked you to give those other sheets of paper to other employees; is that right?

THE WITNESS: Yes.

MR. MALONEY: And anyone that wanted the address you did so with

569 respect to Mr. Chimas?

THE WITNESS: Right.

MR. MALONEY: I see there's a name on the outside here, this envelope, a Mr. Schueler. It has a question mark after it.

How did you come by the name of Mr. Schueler? Did you write that on there?

THE WITNESS: I didn't write that on there.

MR. MALONEY: Probably was made on there when it was received. I don't know.

Did you keep a copy of this letter?

THE WITNESS: Yes.

MR. MALONEY: Do you still retain it in your possession?

THE WITNESS: Yes.

MR. MALONEY: How did it occur to you to keep a copy? Was this your own idea?

THE WITNESS: This was my own idea.

MR. MALONEY: Well, I have no further questions of this witness.

Do you have any questions, Mr. Kramer?

RECROSS EXAMINIATION

BY MR. KRAMER:

Q Mr. Sinsabaugh, have you had occasion to talk to Mr. Green about this case?

A No, not that I recall, no.

570 Q Have you had occasion to talk to Mr. Sullivan about this case?

A Not that I recall.

Q Okay.

MR. MALONEY: Anything further on this witness?

MR. SULLIVAN: Yes.

RECROSS EXAMINATION

BY MR. SULLIVAN:

Q Did Mr. Romer ever follow up with you and ask you if any employees took these addresses from you?

A No, he did not.

Q Did Mr. Romer simply, pursuant to your request, hand you a batch of addresses, address slips?

Q Mr. Grout, on or about August 10th of 1973, did you deliver

A Yeah. He just handed me the address slips and said that if anyone wished to write back give them a slip so they know what the address is.

Q You simply went into Mr. Romer and he gave you the addresses?

A Yes.

Q What is your work area in relation to Mr. Romer's office?

A It is right in the warehouse. Right across from the office.

Q Could you, for the Judge, give us some estimate, maybe in feet of how far distant you are from that area?

571 A Oh, gosh --

Q Approximately.

A I'm just making a rough guess. I say maybe five feet, four feet, somewheres in there.

MR. SULLIVAN: No other questions.

MR. MALONEY: Thank you. You are excused.

Call your next witness.

MR. GREEN: I call on Mr. LaSpina.

* * * * *

586 RAYMOND EBERT

called as a witness, having first been duly sworn by the Administrative Judge, in answer to questions, testified as follows:

MR. MALONEY: State your name and address.

THE WITNESS: My name is Raymond Ebert, and I live at RD 4, Newburgh, New York.

DIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Ebert, by whom are you employed?

A I am an elected business representative of Local 445, Teamsters.

Q Did there come a time when Local 445 filed a petition for an election in this matter of Monroe Tube?

A Yes.

Q I take it that the -- well, the first petition was in August?

A Excuse me, can I get my glasses?

MR. MALONEY: Yes, surely.

Q I show you General Counsel Exhibit 4, is that the copy of the petition that was originally filed?

A Yes; it was August 16, 1973.

Q And, with respect to that petition did you also submit certain
587 authorization cards to the International Labor Relations Board?

A Yes, I did.

Q Now, when you submitted those cards, did you retain in your office or your person any kind of copy of the originals?

A Yes. I made photostatic copies of all the cards I submitted with that petition on August 16th.

Q Okay.

You retained them where?

A I retained the copy in the union's office and a copy also in my files.

Q Now, there came a time when you withdrew the first petition and refiled another petition in September.

Did you receive back the original cards from the Board?

A No, sir, I never received back the original petition either. This was all done by telephone with the Labor Board in New York City.

MR. GREEN: Mark this as General Counsel Exhibit 9.

(Whereupon the above document was marked as General Counsel Exhibit 9 for identification as of this date.)

Q I now show you what has been marked as General Counsel Exhibit 9 for identification and I ask you if you can identify that document.

588 A Yes, sir.

This is a memorandum I sent to Mr. Art Herman who is a representative of the National Labor Relations Board.

MR. GREEN: I show this to Mr. Sullivan.

MR. SULLIVAN: Thank you.

MR. GREEN: I offer this in evidence.

MR. MALONEY: Any objection?

MR. SULLIVAN: No.

MR. MALONEY: Received in evidence, without objection.

(Whereupon the above document was marked as General Counsel Exhibit 9 in evidence, as of this date.)

MR. GREEN (Continuing):

Q Now, you said something about 26 cards that he turned over to you on or about August 11. Perhaps you can just indicate the approximate number of cards that were sent to the Board, as you recall them.

MR. SULLIVAN: What date?

MR. GREEN: August the 16th.

A Mr. Cadero came to my home on August the 11th, which was a Saturday, and gave me 26 cards, authorization cards, from employees of Monroe Tube.

Q Yes?

A And those were the 26 cards that I submitted on August the 15th
589 to the National Labor Relations Board in New York City.

Q Did you later find out that some of the people who signed the cards had left the company before August 15?

A Much later, yes.

MR. MALONEY: When you filed the original petition accompanied with the 26 cards, did you file them by mail or did someone hand carry them to the Board's office in lower Manhattan?

THE WITNESS: The circumstances of filing the petition on August the 15th were this:

Mr. Cadero called me at the office in the late afternoon of that date, the 15th or the 14th, I believe it was the 15th and told me that Mr. Grout had just

concluded the second speech. I knew about the first speech and the employees were, particularly himself, were very upset. He was afraid he was going to be discharged.

Mr. Cadero was --

MR. SULLIVAN: If Your Honor please, this answer by the witness is certainly biased and prejudicial and not responsive.

MR. MALONEY: Well, it may be a little long-winded. I'm certainly not going to give any credence to any hearsay statements by Mr. Cadero.

590 It has one probative factor and that is that he fixed a time and with that I think it's probative and so I will let the witness continue; but I certainly -- I assure you, Mr. Sullivan, it's for that limited purpose that I will allow him to continue. Go ahead.

A So, on my own initiative, without speaking to the union's counsel, I either took the petition and carried it to the Board the following day myself to insure that it would be in the Board's hands before I had an 803 on my hands or one of our employees, Frank Gianelli, carried them down to the Board; but I believe that we carried them down. I don't think they were sent by mail, but I'm not -- my recollection is not clear. I may have taken them, or Mr. Gianelli may have taken them.

MR. MALONEY: Well, is it true these cards are all time stamped in on August the 16th with the exception of two or three?

What I'm interested in knowing is whether or not the cards that are timed from the NLRB on August the 16th were in your possession for what period of time.

THE WITNESS: From August the 11th until August the 16th, and at no time thereafter.

MR. MALONEY: All right. Next question, Mr. Green.

MR. GREEN: I have no further questions.

MR. MALONEY: Mr. Kramer?

591 MR. KRAMER: No questions, Your Honor.

MR. MALONEY: Mr. Sullivan?

MR. SULLIVAN: Yes.

thought our employees should consider from their standpoint prior to the

CROSS EXAMINATION

BY MR. SULLIVAN:

Q Mr. Ebert, the other cards then -- strike that, please. Where are the other cards?

MR. MALONEY: Probably in that envelope there.

Q Mr. Ebert, did you submit all the cards that were in your possession to the Board on August the 16th?

A I believe I did.

Q During that conversation with Mr. Cadero, did Mr. Cadero indicate to you that employees were reconsidering the authorization of the union?

A Yes, he did, in fact.

Q What did he say?

A He said that one man, I believe Mr. Schrool had asked for the return of his card and he told me that he gave back the card. I told him that was the right thing to do, but that was the only one.

Q Did he say anything about other employees telling him they were planning to withdraw their authorizations?

A No, I never heard that until I received the first letter from -- I don't remember the name of one of the employees that wanted his card back; but I was unable to return it because they were in the hand of the Labor Board.

Q When did you receive that letter?

A August 20, something like that.

Q Do you recall the employee?

A No, but I could look at the letter and refresh my memory.

Q Was that the only letter that you received?

A I think I initially received one letter and subsequently received another later. Later then received another letter, until I received four letters in total. That would be after approximately August the 20th until August the 30th.

Q Do you recall the names of the four people?

A I can recall them but not in chronological order.

Q Do you recall them?

A Carrigan (phonetic), Sinsabaugh, Rosenstock and Klimas.

* * * * *

669 Q The first was shortly after that?

A Yes.

Q The second was when?

A About a week later.

Q Are those the only meetings you attended?

A Yes.

Q Would you please tell us what took place at the first meeting?

A When we went in, he started by saying that he had talked to a couple of his lawyers that he made them -- that he met them a couple of times and they advised him not to really talk to us at all. So, he wanted to explain that he heard that some of us had signed cards, and he said, "You could be possibly have problems for yourself and family if you sign them," not to think about it before they signed it again or if -- if they were going to sign.

Q Did he say what kind of problems?

A No.

Q How long did this speech last?

A Only lasted about fifteen minutes.

Q Did Mr. Grout have a prepared text on the speech?

A Yes.

Q Do you remember whether he was reading it, or did he just --

A He just looked at it and reading it, putting it down and talked to

670 the group. He did put it down, and he held it in his hands.

Q What took place at the -- is that all you remember about the first meeting? You don't remember anything else?

A That's about all that I can recall.

Q What took place during the second meeting?

A Well, the second meeting we wanted to know if -- well he talked about if any of us want to have, ask for the card back, he'd help us as much as he could by the copying machine, something to that --

Q Anything else like that?

A At the end of it, he said he'd be in the mill for a little while, and if anybody wanted to ask him anymore questions or anything.

Q Did you attend the meeting just before the election?

A No, I didn't.

Q During the first meeting, do you remember anything being said by anyone about either the unlawfulness or illegality of signing the card?

A Just that at the end somebody said something to the effect of -- Mr. Cordero got up and said something; he said, "Are you saying that it's against the law to sign these cards?"

And after that, I couldn't hear any more. Joe was pretty upset about it, and he said -- Mr. Grout, I don't know if he said anything, and walked out of the door.

* * * * *

AFTERNOON SESSION

(1:30 p.m.)

JUDGE MALONEY: The hearing is now in order.

Please call your next witness.

MR. SULLIVAN: I would like to call on Mr. Rosenstock.

CHARLES ROSENSTOCK

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Rosenstock, which shift are you assigned to?

A The night shift.

Q Did you, during the course of the period between August and October, attend any meetings of the employees which was addressed by Mr. Grout?

A Yes, I did.

Q Upon which dates did these meetings occur?

A Oh, I don't remember the date.

Q Can you place them in relationship to the election?

A Well, the first meeting was, the first meeting that I was at, I think it was the time the cards which were being seen, the union cards, were being signed, and he came in one day.

Q Do you recall how many meetings there were that you attended?

675 Could you tell us approximately when these meetings took place? Was one about the time the cards were being circulated?

A Yes.

Q How about the second?

A The second one I think was about a week or a week or so.

Q When was the next one?

A I think a day or two before the election. Somewhere around that time.

Q Were there any others?

A No, not to my knowledge, just those three.

Q Would you tell us what took place during the first meeting which you said occurred about the time the cards were being circulated?

A Well, Mr. Grout walked in. He had a little speech prepared with him, and he said that he understood that people in the company were passing out union cards, andhe said that these cards could have a legal consequences or something like that towards you and your family.

Q Was anything else said?

A Well, he also went on to say that at this time I have -- I was advised by my lawyers not to say anything else. I was advised by my lawyers that I shouldn't say anything else, and there will be another meeting in the near future, or I don't know if he said next week or the week after, but in the near

676 future, to my knowledge.

Q Did any employees participate in that meeting by way of asking questions or addressing the group or anything else?

A Well, this is the combination day and night shift meeting.

Q Uh-huh.

A He told the night shift that 4:30 comes to stand on, and the day shift

quit at 4:30 to come into the lunchroom for this meeting.

Q Yes.

A And we're all together.

Q Did any of the employees say anything during that meeting?

A During this speech that Mr. Grout had said --

Q Well, Mr. Grout was there; didn't any employees have anything to say?

A Well, just one towards the end of the speech that I could remember. Joe Cordero, he wanted to know -- he got up and said, he wanted to know if it was against the law to have a union or against the law to have union cards being passed out.

Q And had Mr. Grout said anything about anything being against the law?

A Well, Mr. Grout did not say anything about it being against the
677 law, but he started to walk out. He had finished his speech, and as I said before, he said in the future there will be another meeting.

Q Can you recall that meeting, the second meeting which you said took place sometime after that, could you tell us what took place during that meeting?

A Well, this was the night shift meeting.

Q Who addressed the meeting?

A Mr. Grout addressed the meeting. This is the second meeting, called for the night shift.

JUDGE MALONEY: How much longer after the first meeting was the second meeting?

THE WITNESS: I t might have been a week, a week or so later.

JUDGE MALONEY: Go ahead. Thank you.

A Mr. Grout stated that if anyone wanted to have their union cards back, if he -- that he would try to help them to get them back by using the company paper and they made it out.

Q Was anything else said during the course of that speech?

A He also stated that he'd be in the plant for a couple of hours,

and if anybody wanted to come over and talk to him about this matter.

Q During that second speech, was anything said about carbon
678 paper?

A Not that I could remember, about carbon paper.

Q During that speech was anything said about coming up to the company office if you wanted to get your card back?

A The only thing that I remember is Mr. Grout just said that he had been in the plant for awhile, maybe a couple of hours or for awhile, and if anybody wanted to come up to him, he would try to help them get their union card back.

Q The last speech, now: When did this one take place?

A This was maybe a day or two before the election.

* * * * *

680 Q During the first speech, did you hear anything said such as your family would suffer, and --

A According to what Mr. Grout said --

Q That's what I want to know.

A He said those cards, he said your family could suffer. Your
681 families could suffer.

Q Do you remember the words that preceded that statement, that came just before the statement?

A No. I can't say that I can.

Q Do you remember what followed the statement?

A This is the first speech, I think, that came up, and after that was when Mr. Cordero was upset and said if it was against the law to have the union or union cards.

Q Had Mr. Grout said it was against the law?

A No, I didn't hear Mr. Grout say anything about that.

Q Did Mr. Grout read the first speech?

A Mr. Grout read the first speech.

Q What ab out the second speech?

A Mr. Grout had it prepared similar to the one you have.

Q What?

A And he read it up, down, up and down, sort of like a news commentator.

Q What about the third speech?

A All his speeches had a -- like a green or yellow pad like that one (indicating).

MR. SULLIVAN: Okay, I have no further questions of this witness, your Honor.

JUDGE MALONEY: Cross-examination?

682

RECROSS-EXAMINATION

BY MR. GREEN:

Q You say he read all of the speeches, all three?

A He had a pad.

Q Yes?

A He would look at it.

Q Uh-huh?

A Read. Look up, speak, look back down again.

Q Did he also have apad in his hands?

A Yes. It was always on his person. He never had it on a desk. If he had it on his desk, it was his hands was on it.

Q But do you recall sometimes it was on the desk?

A Well, looking up and down.

Q Yes.

Did he ever show you a copy of the speech?

A Excuse me?

Q Did he ever show you a copy of the thing that he was reading from?

A Well, the speech was there.

Q I know, but did he ever show it to you, the written word?

A No, he never showed me any words that was on the speech or anything.

Q Okay.

683 Now, the first speech took place when?

A I don't recall what day it was.

Q No, I'm not asking about the day it was; I'm asking about when it took place.

A I imagine it took place after he got -- he found out about the cards being circulated.

Q Do you have any idea how he found out about the cards?

A No, sir; I don't.

Q Now, you say he didn't say anything about signing the cards was illegal; that was your testimony?

A Mr. Grout did not say that signing the cards was illegal. He said it was serious. It could be serious for you and your family, but he did not say that signing these cards is illegal.

Q He said, though, didn't he, that there would be, might be legal consequences?

A He said there could.

Q There could be legal consequences?

A He said that there could.

Q Did he also say his lawyer had advised him against talking to the employees?

A He said that what he had prepared was all he could say at that time.

Q Huh?

684 A He said that his lawyer had advised him not to say anything else.

Q How long did he talk?

A Roughly ten minutes, fifteen minutes.

Q Fifteen minutes?

A I said roughly ten minutes, fifteen minutes.

Q I am asking you, was it less than, perhaps five minutes or two minutes?

A I would say roughly ten minutes.

Q Well, did you leave something out?

A Did I leave something out?

Q Yes, about what he said.

A To my knowledge, I didn't leave anything out, to my knowledge.

Q I understand that, but what I am trying to get at, I have been listening to you describe Mr. Grout's speech, and I'm just kind of curious if he said anything else that you can recall?

MR. SULLIVAN: Are we talking about speech No. 1 or No. 2?

MR. GREEN: Yes, the first.

A Well, the only thing what I said was everything that I remember.

Q Okay.

Was it after that, after that first speech that you were in Mr. --

685 that you were in his office, and he was asking you to get your card back or dictating a letter to get your card back?

MR. SULLIVAN: Objection. I don't think there's a letter like that at all in the record.

JUDGE MALONEY: I don't recall either whether there was or not. I'm going to overrule it.

Did you ever go to Mr. Verbert's office or see Mr. Verbert about getting your card back?

A I went to Mr. Verbert, but I don't recall if it was a week or two weeks after this, I don't recall the date on this.

Q Okay, fine.

How long were you in his office?

A Well, I think -- it's rough to estimate the time. I went up there and asked Mr. Verbert if --

Q I'm asking if you remember what was said in that conversation, how long you were in Mr. Verbert's office?

A No.

Q Incidentally, was this Mr. Verbert's office?

A Well, the office is in the mill.

Q Mr. Verbert was there?

A Yes.

JUDGE MALONEY: Did he have a desk, or does he have a desk there?

686 THE WITNESS: Yes. There's a desk there. The office overlooks the mill.

JUDGE MALONEY: Is it a general desk, or is it his desk?

THE WITNESS: No, it's a general desk.

JUDGE MALONEY: All right.

MR. GREEN: I would like to repeat my question.

JUDGE MALONEY: Proceed.

Q How long were you in that office with Mr. Verbert? And did you ask him for the address; go ahead.

JUDGE MALONEY: Let the witness answer the question.

MR. GREEN: I'm sorry. Please answer the question.

A I would say roughly, roughly twenty minutes. And meantime, I can't be putting that really into time.

Q Well, I'm asking for your recollection of how long you were in that office with him?

A Maybe twenty minutes.

Q Okay.

Was anybody else there?

A No, sir.

Q Did anybody come in there during that time?

A No, not that I recall. This was at night.

Q Well, what time at night?

A Might have been after the break, 11 o'clock break.

Q Might have been earlier?

A I mean, I can't really pinpoint the exact time.

* * * * *

903 THE WITNESS: Harold P. Grout, R.D. 3, Monroe, New York.

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Grout, by whom are you employed?

A Monroe Tube Company, Inc.

Q In what capacity?

A President.

Q Mr. Grout, on or about August 10th of 1973, did you deliver a speech to a group of Monroe Tube employees?

A I did.

Q Which employees attended the August 10th meeting?

A All hourly employees and some of my supervisory staff.

Q Was your August 10th speech extemporaneous, or did it follow a prepared text.

904 A I prepared it verbatim from a prepared text.

Q Will you tell us the subject matter -- the substance of the speech?

A I indicated to the people present that I was aware that cards had been circulated for signature. I questioned whether they fully appreciated the involvement or implications concerning these cards.

I urged them not to sign any more cards until I can provide them with more information in the near future.

MR. SULLIVAN: I would like to have this document marked Respondent's 6.

(Document referred to was marked Respondent's Exhibit 6 for identification.)

Q Mr. Grout, I show you what has been marked for identification as Respondent's Exhibit 6, a three-paragraph document headed August 10, 1973, and ask you to describe this document for us.

You can take it and read it.

A This is the presentation that I gave the people on August 10th.

Q Did you read the entire speech to the employees on August 10th?

A Yes, I did.

905 Q Did you say anything to the employees before reading the August 10th speech?

A Yes, I indicated to them that I personally had drafted a presentation, and I had discussed this with counsel prior to the presentation, and counsel advised that I not present that; in lieu of that they suggested that I present this information here.

Q Did you say anything to the employees after finishing that August 10th speech?

A Yes. Immediately upon finishing, there was one question, as I recall.

Q Do you recall the question?

A The question was whether or not I said it was illegal to have a union, and I replied I did not say it is illegal to have a union, and I indicated that there would be a copy of this speech on file in my office, and I left the room.

Q Do you remember the individual that raised the question?

A Yes.

Q Who was that?

A Joe Cordero.

MR. SULLIVAN: Your Honor, at this time I would move for the introduction of Respondent 6.

JUDGE MALONEY: Is there any objection to Respondent's 6?

906 MR. GREEN: I would like to have a short voir dire on it.

JUDGE MALONEY: All right. It will be a short voir dire.

VOIR DIRE EXAMINATION

BY MR. GREEN:

Q Mr. Grout, is this the piece of paper that you used when you were in that room?

A Yes, it is.

Q This is the exact piece of paper. It wasn't a yellow pad or anything else?

A That is the piece of paper.

MR. GREEN: I have no objections.

JUDGE MALONEY: Any objection, Mr. Kramer?

MR. KRAMER: No.

JUDGE MALONEY: Admitted as Respondent's 6.

(Document referred to was received in evidence.)

BY MR. SULLIVAN:

Q Mr. Grout, on or about August 15th did you deliver a speech to a group of Monroe Tube employees?

A Yes.

Q Which employees attended the August 15th meeting?

A Precisely the same group that were in attendance on the 10th,
907 all hourly employees and some management supervisory people.

Q Was your August 15th speech extemporaneous, or did it follow a prepared text?

A It followed a text.

Q Would you please tell us the subject matter of the August 15th text?

A The subject matter was an informative type presentation concerning information relative to the signing of the cards that were being circulated. We discussed certain implications, and involvements that might come to be as a result of signing cards.

This was a type of comparative analysis between the company as was operating at that time and the way it might be operating under a union setup situation.

That was basically the text of the presentation.

MR. SULLIVAN: May I have this marked as Respondent's 7 for identification?

(Document referred to was marked Respondent's Exhibit 7 for identification.)

BY MR. SULLIVAN:

Q Mr. Grout, I show you what has been marked as R-7 for identification, a six-page document headed August 15, 1973; time: 2:40 p.m. and 5 p.m., and I ask you to glance through this, if you will, through the
908 six pages, and describe this document for us?

A That is the document that I read on the 15th.

Q Did you say anything to the employees before reading the speech that you have in your hand?

A I don't recall I did, no.

Q Did you say anything to the employees upon finishing that speech or after finishing the speech?

A No.

MR. SULLIVAN: I offer Respondent's 7.

JUDGE MALONEY: Any objections?

MR. GREEN: I would like to make the same inquiry.

JUDGE MALONEY: All right.

VOIR DIRE EXAMINATION

BY MR. GREEN:

Q Is this the group of papers that you had in your hand on August 15th?

A Yes.

Q Did you prepare this document yourself?

A I prepared it with assistance from counsel. My secretary typed it.

Q Were there any other drafts of this document?

A I don't recall.

MR. GREEN: I have no objections.

JUDGE MALONEY: Any objections, Mr. Kramer?

MR. KRAMER: Mr. Grout, this document that has been marked Re-
909 spondent's Exhibit 7, the speech of August 15th, are you sure it wasn't on a yellow paper in your handwriting?

THE WITNESS: I am sure.

MR. KRAMER: No objections.

JUDGE MALONEY: Admitted as R-7.

(Document referred to was received in evidence.)

* * * * *

915 Q Mr. Grout, would you please tell us, to the best of your recollection, what you said to the employees on October 11, 1973?

A First, we presented the employees with a vote demonstration. Mr. Monks handled the demonstration because as I recall I had a sore throat

at that time, and I didn't have much speech.

Following the vote demonstration I discussed several items that I thought our employees should consider from their standpoint prior to the election. I gave them a form of ecomonic information from the Company's standpoint that I felt only I was qualified to give, based on my position, experience, et cetera.

Then we proceeded to the awards for the contest winners.

Q Do you recall the words that you used in the portion of the meeting which was devoted to your speech?

A Do I recall the words that I used?

Q Can you repeat here, today, now, what was said by you on October
916 11, 1973?

A From the employees' standpoint, I indicated what it would mean if we would have a union. What it meant without a union.

JUDGE MALONEY: Why don't we just spell this out now, because, I mean, I appreciate you may want a summary at this point, Mr. Sullivan.

MR. SULLIVAN: No. I don't.

JUDGE MALONEY: Then, perhaps the witness can be a little more elaborate in rather than in detailing what these elements of the speech were, if you will.

Q Rather than summarizing the speech, Mr. Grout, would you please repeat here today the words that you used in the speech?

A If I can refer to that document there, which is typed from the notes that I used during the presentation, I mean, it is all right there in black and white. I can't recall specifically, verbatim, what I said months ago.

That was why I think you indicated that I should sit down and make --

JUDGE MALONEY: What I am suggesting, Mr. Sullivan, is not a verbatim recitation here, but a little more elaboration than merely a capsulized summary.

Q Well, could you, as his Honor requested, elaborate in detail on the various aspects?

917 JUDGE MALONEY: In other words, what you are trying to do, as I understand, is exhaust this witness's recollection?

MR. SULLIVAN: Yes.

A From an economic standpoint, I indicated to them that it was quite difficult for our company to compete with other mills in the country. I explained why. Based on our geographic location, we have freight factors to consider. Why don't have the most modern, up-to-date equipment.

I did feel we had certain things in our favor, in particular the employment group. We have efficiency that I felt other operations didn't have. Basically, I gave them my impression of the operation from where I sat, because I felt they couldn't appreciate the total picture the way that I could.

Q What was the context of this economic discussion, what did it relate to, if anything?

A I was trying to indicate to them in some words that if you got a pie, you get some pieces out of the pie. You get wages, benefits, raw materials, et cetera, et cetera. I didn't know whether they realized the full implication of the situation that they were getting involved with, as far as collective bargaining was concerned.

Q Was there any discussion of collective bargaining by you at that meeting?

A I think I indicated that we most certainly would bargain in good
918 faith if it was their decision that they wanted representation in the form of a union.

Q Were there any other areas besides this economic discussion of collective bargaining that you talked about during this meeting?

A Yes.

Q What were they?

A Comments had been made, or questions had been asked me concerning the possible or sale or closing of the plant were a union to come into Monroe Tube Company.

Q What did you say about that?

A I indicated to those present that we had been negotiating a couple of years prior to that time on possible sale of the company. A decision was made at that time not to sell the company.

This is a family-type operation that my father-in-law started thirty-odd years ago. I felt it belonged to Monroe, New York.

There were sixty-odd jobs to be considered. I felt a personal to these people. It is a family-type business. It is a very close type operation. A decision was made at that point not to sell, and most certainly, if their decision was to have a union, we would not sell or close because of that decision.

Q Mr. Grout, was anything said to the employees about the question
919 upon which you just based all of this?

A Could you repeat the question?

MR. SULLIVAN: Would the reporter read back the beginning of the last sentence?

(The record was read.)

Q Was that answer that was just read back to you, did that appear any place in your speech or anything to that effect?

A Yes.

Q Do you recall what that was, what those words were that appeared in your speech; do you remember how you said that?

A As I recall, I indicated that some people had been asking questions concerning the possible sale of the company were a union to come in. I wanted to reassure those people present that in fact that would not happen because they might elect a union to represent them.

Q Was anything said during this speech about union control over union members?

A I don't recall.

Q Was anything said during this speech concerning why you felt the employees should cast ballots?

A Yes. I believe I indicated to them that the majority of those voting would decide this issue for the total group. If there are five people

920 in the group, then the three would make the decision for the entire unit.

Q Was anything said during this speech about the sense of belonging to a union?

A Yes.

Q What?

A I believe I indicated something to the effect that it would cost them in the area of $600 pre-tax income over the period of a three-year contract for union dues.

Q Was anything said during the course of this speech about any benefit programs?

A Yes.

Q Do you recall what it was?

A Yes. It had come to my attention that several people were under the impression that they would automatically have a union pension program and union medical program, et cetera.

I said, in fact, in my opinion, that that is no guarantee.

Q Was there anything said about wage raises that might result after a union was successful in the company?

A Yes. As I recall, I indicated there would be no automatic raises as a result of this election.

Q Was there anything else that you can recall about that recitation?

A Not in particular.

921 Q Mr. Grout, at the time you typed what is marked as Respondent's Exhibit No. 8 for identification, which is the document that we most recently discussed, the one dated Oc tober 11, 1973?

A Yes.

Q Was this an accurate reporting to your knowledge of what transpired during that speech?

A Yes, very accurate.

Q Was that document based just on your knowledge of what took place during that speech?

A Yes, it was based on my recollection of what I had presented to the group.

MR. SULLIVAN: Your Honor, I would once again move for the introduction of Respondent's 8 as past recollection recorded.

JUDGE MALONEY: Any objections?

MR. GREEN: Yes.

MR. KRAMER: Yes.

JUDGE MALONEY: Overruled.

I will admit it as Respondent 8.

(Document referred to was admitted into evidence.)

* * * * *

940 Q Now, getting back to the August 15th speech, I wish you would describe what you said during the August 15th speech again?

A It is all in the exhibit, verbatim. I read it word for word.

Q I would like you to tell me what you said, not what the paper said.

A I provided the employees, the group, with information relative to the signing of the union authorization cards. Some of the involvements and implications that might result from their signing cards.

Q What else did you say?

941 MR. SULLIVAN: Your Honor, I am going to object. The document speaks for itself. The witness has testified he read it verbatim. He has already laid a foundation for it on direct examination before the document was introduced as to what he said.

JUDGE MALONEY: Overruled.

Q Please tell me what else you said?

A I suggested to our employees that if they felt they had made an error in signing cards based on information which I was providing them at that time, and they wished to write a letter requesting return of those cards, I would make photocopy equipment available to them to copy the letter so they would have a copy for their file.

Q Had you made or given any instructions to your supervisory people beforehand or afterwards to accomplish that result to make those facilities available if the employees should follow up on what you said?

A I believe I don't recall specifically.

JUDGE MALONEY: Did you indicate whether you would get any employees who wished to withdraw the address of the union?

THE WITNESS: Yes. I believe I did, your Honor.

JUDGE MALONEY: All right.

Next question.

942 Q Well, what I am trying to get at is, you made this statement during the speech about that certain types of facilities would be made available by the company to employees, and I am just wondering whether or not you made any arrangement with other people, so when these employees came up and asked about whether there would be somebody who knew what they were talking about?

A As I recall, some of the supervisors were present at the meeting, and most certainly they would have cooperated with the employees upon request for a copy of a particular letter.

That was the only service that was offered that I recall, a copy.

Q Did you receive any copies of letters that were sent or that were written by employees of the company to the union?

A Did I receive any?

A Yes.

A Yes.

Q Now, with respect to --

JUDGE MALONEY: Just a moment.

Did the company actually mail any of those letters, to your knowledge?

THE WITNESS: I am not certain how or who mailed the letters.

JUDGE MALONEY: Go ahead, Mr. Green.

943 BY MR. GREEN:

Q Now, in your speech of October 11th, you made some reference about an offer to sell this plant two years ago.

Had you received such an offer two years ago?

A We negotiated quite extensively for the sale of the company, approximately two years prior to this situation.

Q Were your employees notified of that?

A I don't recall that they were. There was no concern over this at the time.

* * * * *

959 Q Mr. Nowak, could you look at page 3, the bottom of the page where the quote starts, would you read that quote aloud and tell us if that refreshes your memory?

A "It is within your right to send for your membership cards to have it returned from the union. The office will supply copying facilities to you if you want to copy your letter requesting the cards from the union."

Q Is that in quotes?

A Yes.

Q Is that how you remember Mr. Grout's speech?

A That isn't how I stated it a moment ago.

Q Is that how you remember his speech?

A I remember it now that my memory is refreshed.